THE UNSETTLING OF AMERICA II **WENDELL BERRY**

THE
NATION

FEBRUARY 14, 1976 *50 cents*

BEHIND THE ZIONIST POSITION
THE ISRAELI DEBATE WE NEVER HEAR
IRENE L. GENDZIER

Elliot Richardson
White Knight on a Greased Pole
Steve Neal

'BLUEPRINT FOR TYRANNY'
CONGRESS OVERHAULS THE LAWS
STEPHEN GILLERS

Off to the Races
The First 'New England' Primary
Gordon L. Weil

PRESIDENTIAL BATTALIONS
THE POWER OF 'UNDECLARED' WAR
JAMES A. GOODMAN

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LETTERS

old-fashioned

Washington, D.C.
Thanks for sending me Paul Good's "Daniel Patrick Moynihan: The Mask of Liberalism" [*The Nation*, Dec. 20], which was much needed. I have had difficulty understanding why some New Yorkers are having a love affair with Moynihan. I guess I'm just an old-fashioned liberal. *Bella S. Abzug, Member of Congress*

once again

Philadelphia, Pa.
Your issue of January 3-10 ["South Africa: Moment of Crisis"] was excellent. Reading only *The New York Times*, I had gained an incomplete picture of recent events in southern Africa and their significance. Once again *The Nation* has made "the news" comprehensible. *Robert R. Aiello*

hole in the survey

Lincoln University, Pa.
In his lengthy review of James Weinstein's *Ambiguous Legacy: The Left in American Politics* [*The Nation*, Jan. 17], Ronald Radosh has accomplished what no other scholar has yet been able to achieve. He has surveyed the entire history of the American Communist movement without once mentioning the relationship of the Communist Party to black Americans. Evidently "American politics," in Radosh's scheme of things, relates only to whites.
Philip S. Foner, Professor of History, Lincoln University

director's stance

North Hollywood, Calif.
In *The Nation* of Jan. 17 Richard Peterson, who, I am bemused to discover, is listed as "a doctoral student in cinema studies," reviews two books dealing with the films of John Ford. After describing both works as "extremely 'auteurist' in their methodology," he proceeds to evaluate the analyses of Ford's pictures at considerable length, going into the content of specific movies and scenes in movies at different periods as possible indicators of Ford's political stance.

Nowhere is there any hint that screen writers contributed any of this content. . . . How can we suppose music lovers would react to a review of "Zubin Mehta's Fifth Symphony" which failed to mention that somewhere, in very small print, the program listed the composer as Ludwig van Beethoven? *V.W.C. Kilian*

New York City
Certainly, a critical approach that automatically assumes the director of any film to be its sole author is entirely open to question. But in Mr. Ford's case, as in Mr. Beethoven's, the evidence of consistent authorship is quite strong. The screen writers with whom he worked most often—Dudley Nichols, Frank S. Nugent, Nunnally Johnson—and his many cinematographers have testified that Ford worked closely with them on all levels of production, often making radical changes in the script at the very moment of shooting. As I said in my review, the "significant moments" of Ford's films are created through a directorial eloquence of an essentially visual nature, involving careful composition and choreographic exercises with his actors. A comparison between the Beethoven and Brahms works performed by Zubin Mehta would reveal strikingly different pieces interpreted by a particular temperament. Taken as a group, Ford's films have a formal and thematic unity that transcends categorization under the individual screen writers' names. *Richard Peterson*

correction

O. Edmund Clubb writes to say, referring to his "China and the U.S. After Chou" [*The Nation*, Jan. 31], that it was in October 1971, not in September, that Peking won China's seat in the United Nations. *—The Editors*

EDITORIALS

Infanticide

The Supreme Court did not quite throw the baby, electoral reform, out with the bath water when it struck down major provisions of the Federal Election Campaign Act of 1974. It merely transformed this infant reform to a shallower tub in a colder room. The child may not survive.

There were certainly problems, political and constitutional, in the law as it was originally drawn. On the purely political side, its effect was to strengthen the existing major parties and to increase the already substantial advantages of incumbents over challengers (in fact, it has been dubbed the Incumbents' Preservation Act). It made challenges by minor parties and nonincumbents much more difficult, thus limiting the people's choice. In the constitutional area, it raised hard questions about the freedom of individuals to participate in the electoral process. The Court settled that, for the moment, by equating for the first time, money and speech. In the cynical old American phrase, it declared that "money talks"—put another way, that limits on money in the expensive business of American politics amount to limits on the free speech protected by the First Amendment.

The real effects of this important decision are not yet clear. The ruling is, as Mary McGrory put it, "turgid" and even "odd," and she adds that if the Act is not dead it is now at least "a candidate for a mercy killing." And knives are being sharpened on Capitol Hill by supporters of the bad old ways to end political reform's right to life. In all this, there is one clear villain, Wayne Hays, the cranky, despotic Democrat from Ohio, whose position as chairman of the House Administration Committee enables him to cripple what he cannot kill. It was Hays and his allied incumbents who saw to it that, in the bill as passed, expenditure limitations on Congressional races hobbled challengers and magnified the advantages of those already in office (franking privileges, staffs paid by the taxpayer and working full-time for the boss's re-election, etc.). And they saw to it that Congress appointed the majority of the Election Commission, a provision the Court struck down. Men like Hays are the enemies of any effort to get corrupting money out of the political system, and the arrogant Hays is quite barefaced about it. One positive result of the decision, as David Broder points out (*The Washington Post*, February 4) is that it "systematically undid the mischief of Rep. Wayne Hays."

But the decision has left up in the air many provisions of the law on the influence of money on our politics. Just two years after the worst of the Watergate corruption revelations were becoming known, and while illegal corporate slush-funding cases are still before the courts, the whole question of limits on the intervention of the rich and powerful in American politics is once again unsettled. For instance, after the Court's decision that money equals speech, there is now nothing to stop a Nelson Rockefeller from using his own vast fortune to make a late start in the Presidential race; a millionaire in Maine may now make a major challenge to Senator Muskie, and the same is true in Ohio and other states. And the Court has freed individuals and groups to spend as much as they want in

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support of candidates, as long as it is done without the authorization, cooperation or collusion of the candidate. Clearly, that is a loophole as big as the Milky Way.

The 1974 law, with all its faults, lies in ruins. It should be reconstructed, and on a sounder constitutional footing. But with a man like Wayne Hays controlling the site, because the rest of Congress won't take him on and beat him, it will be, as Majority Leader O'Neill has said, "one helluva fight."

Final (?) Questions on Moynihan

Will we ever be free of the Moynihan phenomenon? Is he at last going to stop pirouetting on the stage of the "world" and of domestic politics? Will he really go back to teaching, as he claims he wants to do, or will the next episode be a race for the Senate seat in New York? At any rate, the screen is blank for the moment, and the relative quiet encourages speculation about this kind of folk hero.

One point is that he is in the great tradition of performers in American political life. He is perhaps not as good at it as Fiorello La Guardia but much better than, say, Ronald Reagan, a relatively dull sobersides. Moynihan's performance has been as a kind of clown—a clown on the make. He entertains with his tricks and airs and graces, and the best part of his turn is the disappearing act. He is always disappearing back to Harvard, and then popping up again from some other governmental box, grease paint in place. He appeals to the crowd by flattering it, which again is nothing new. His attacks on the world's "despotisms" (coming from the servant of an administration that has done nothing but encourage despotism among our "friends") are designed to please Americans and tickle them with notions of their own superiority.

The serious side of the recent Moynihan career is that he has managed to advertise the disarray in the country's foreign policy establishment. He has done this by his repeated challenges to the Secretary of State and the President which twice in the past few weeks have wrung from them an endorsement of his behavior at the U.N. This is very good for the Moynihan build-up but not so good for the orderly conduct of the nation's foreign affairs. In the old days, politicians in this country made reputations for themselves by "twisting the lion's tail," meaning that they attacked the presumed dominance of "our British cousins" over American policy. It has taken a Moynihan to make his name by twisting the tail of the government he presumably serves. He can get away with this nervy act because the star of Kissinger is in such sharp decline and a President running for nomination against a reactionary Reagan does not dare to bring the outspokenly "hard-line" Moynihan to heel, not even for his manners. So Moynihan puts on the act of being a loyal servant simply carrying out his boss's orders, casting Mr. Ford in a role a more sensitive man might find hard to perform.

One thinks back to a couple of Moynihan's predecessors at the U.N.—Adlai Stevenson, not knowing the truth, gallantly lying about the Bay of Pigs, and Arthur Goldberg, who left the Supreme Court when Lyndon Johnson promised him a relatively free hand at the world body. Moynihan won the independence these two never had by his bold rhetoric, skillfully using his genius at public relations. It is not clear, unhappily, that he used that inde-

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pendence to advance any cause larger than his own.

A final question: is it possible still to think of this ponderous lightweight as a Democrat? The voters of New York may have to face that question.

Nixon's Booby Trap

It is startling to realize that some of the worst elements of the "law-and-order" thinking of Richard Nixon and John Mitchell remain in a bill now before the Senate Judiciary Committee. The bill, labeled S.1, lies at the end of a long trail which began years ago with the innocent and worthy aim of revising the federal criminal code, bringing it up to date and removing its anachronisms and inconsistencies. But, as Stephen Gillers points out in an article in this issue, something happened to that purpose after the code's draft left the hands of the commission headed by former California Gov. Edmund G. Brown and directed by Prof. Louis B. Schwartz. What happened was that the Nixon-Mitchell combination got their hands on it and laced the code revision with some of the most repressive provisions ever introduced before Congress.

In its present form, S.1 is nothing less than a serious attack on our form of government. It would make it a crime to distribute "national security information," which it defines in the broadest possible terms. Given this power, the President would have an absolute lock on the knowledge needed to make the laws of the land and to run the government. He could, with impunity, keep Congress and the people in total darkness about the issues of the day.

Two parts of the espionage provisions of S.1 illustrate the seriousness of the danger. The first, which might be called "The Press Is a Foreign Enemy" section, concerns the "communication" of "national security information" to a foreign power. That word, "communicate," would radically change our law.

The common way of thinking about espionage is to imagine that a person who possesses vital information secretly imparts it to a foreign spy. S.1 changes that staple notion of spy dramas. The term "communicate" is so defined that espionage is committed if anyone gives information to a newspaper for publication and the newspaper publishes it. Thus any information characterized as "national security" which reaches the Soviet Embassy via one of the many newspapers it receives would be covered by this provision and its publication could be cited as passing secrets directly to the Russians. In the Pentagon Papers case, the lower court rejected such an argument (which the government, incredibly, made) and so the Supreme Court never had to rule on it. S.1 insures that the next time that issue comes up, the "offending" newspaper will be guilty of espionage—a potentially capital offense. The bill thus perpetuates the Nixon view of the press as an enemy nation.

The second way in which S.1 tilts the balance of power drastically toward the President is even more alarming: it would be a crime for a person possessing "national security information" to pass it on to any other person. If a member of Congress received "national security information" from a civil servant, it would be a crime for that member to "communicate" the information to a fellow legislator. And the recipient could also go to jail if he or she failed immediately to notify the executive branch of the "leak." S.1 would therefore give the President the power to prohibit exchanges of information between Congressmen.

All this is bad enough, but the faults of S.1 go beyond espionage. The section on drugs and on the redefinition of insanity, and the needlessly harsher punishment provisions reflect a simple-minded "tough" attitude which has always failed, and will go on failing, to deal with the complexities of criminality.

Fortunately, S.1 is far from becoming law. It is still before the Senate Judiciary Committee. The House has not yet seriously considered it, and Reps. Robert Kastenmeier, Don Edwards and Abner Mikva have come up with a bill (H.R. 10850) which, at the very least, avoids the repressive traps of S.1 and which has been endorsed by the ACLU. The criminal code needs revision, but Congress owes it to the people, and to itself, to make sure that in its final form the law does not become an instrument of repression. It would be tragically ironic if, after managing to stop the Nixon administration from getting away with extra-constitutional powers, Congress now passed legislation which granted future Presidents those very weapons.

Men of Courage

A stunning development in the area of nuclear energy was the principled resignation last week of three engineers from the reactor division of General Electric. These men—Dale Bridenbaugh, Richard Hubbard and Gregory Minor—are all in their late 30s or early 40s, they all have families to support and none of them has had any employer but G.E. To call them courageous is putting it mildly. The company expressed "complete surprise" at the resignations and said that the three merely repeated in their letters "the emotional claims of Project Survival, a local anti-nuclear group." (*The New York Times*, February 3.)

In fact, it is not the emotion of these men that G.E. fears but their authority. All three of them worked at the operational level, and are expert in the installation, performance and hazards of nuclear energy plants. Their joint opinion is that the plants designed according to present technology are an immediate and growing danger to man and his environment and should not be built. They are frightened, feel guilty and made themselves unemployed at a time when that is no easy gesture.

On the day following the news of the resignations, the *Times* carried stories reporting that the Defense Department is holding up payments to the Northrop Corp. while it audits the company's books in search of improper use of government funds, and that the Attorney General of Texas has filed suit against Gulf Oil and Phillips Petroleum for allegedly making illegal contributions to Texas politicians. Recently the Pentagon "admonished" Northrop for its lavish entertainment of Air Force generals at a duck-shooting lodge. Last month, the Washington columnist, Clayton Fritchey, headed a column "Corporate Crime Wave."

There is no direct connection between the engineers late of G.E. and the shady financial and lobbying tactics that now seem to be endemic among large American corporations. But the contrast between the two kinds of behavior is both striking and alarming. Two hundred years after its

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founding, the country still bears and raises admirable human beings, but it has also become the lair of venal and insolent corporate anonymities. We are the many, they are the few. But their power is focused, ours is diffused. If a Lobby for Public Decency were formed—and the need for it is evident enough—three unemployed men of character are known and they might comprise the initial staff.

Toady's Return

An unpleasant little footnote can be added to the accounts of the growing disarray of American foreign policy. It comes from the graceless and patronizing words of Elliot Richardson about the social policies of Great Britain upon his retirement as Ambassador to London and his swearing in as Secretary of Commerce (see article, p. 167). Richardson chose that occasion to fawn on the mean and hopeless tinkering with the American economy that marks the Ford administration and to sneer at the socialist policies of Britain. As Richardson certainly must know, Britain is a mixed, not a socialist, system, with very large parts of its economy under private control. That did not stop the politically ambitious ex-envoy to the Court of St. James (and ex-Secretary of HEW, ex-Secretary of Defense, ex-Attorney General, ex-Under Secretary of State) from roundly declaring that "the private sector is the only means of creating permanent jobs. Any other means is a palliative at best." And he attacked the country to which he had been accredited for showing "less steadfastness at times in the recognition of these fundamental economic truths."

Are we from now on to expect the diplomatic representatives of American interests abroad, when they return home, to give off-the-cuff critiques of the governments of their host countries? Would that advance the cause of the United States in its dealings with the rest of the world? One wonders what the Richardsons of the world would say on their return from countries like Russia and China which have full employment, even if it is achieved at the cost of total regimentation. Perhaps in those cases we would get a moral-sociological analysis of the faults of those systems instead of a lecture on the unique virtues of "free private enterprises" as a provider of full employment.

Richardson joked about his role as the Cabinet handyman of the Nixon-Ford administrations, advertising his versatility by saying that he hoped to stay on as Secretary of Commerce through 1981 to prove that he can "hold a job." It is quite clear that his shockingly undiplomatic comments were the grossest kind of flattery of a President on whose ticket he would like to be—if, in fact, he is not hoping that Mr. Ford will stumble in the primaries, making way for a Republican "moderate" like Elliot L. Richardson to contest the nomination with the troglodytic Reagan. In the process he did his country no service.

Night Work

Presumably to avoid the appearance of a disqualifying naïveté, critics of the CIA's secret incursions into the affairs of other countries—Sen. Frank Church and Anthony Lewis of *The New York Times* are typical in this respect—add to their admonitions a postcript to the effect that there could in the future be a situation of such peril to the United States that a clandestine operation would be necessary. Thus Mr. Lewis (*The Times*, January 29) would confine the CIA "to intelligence functions except possibly for limited covert action in situations posing grave risks to the national security."

Having made this concession to the "special services" of the CIA, the critics would have done as well to remain silent. That is so for two reasons. First, if the idea of covert intervention is entertained as a last resort, then its capability must be maintained, and that means maintaining a corps of caper-ready commandos somewhere in the bowels of the agency. Such professional mischief-makers, one may be sure, will be eager to display their prowess and earn their keep. They will be ingenious in discovering, or if necessary creating, the perilous crisis which only their tools can disarm. And second, no U.S. administration ever has sent, or ever will send, the CIA into malign action except on the premise that the ship of state is in mortal peril. It may be only a multinational corporation or a political reputation that is at hazard, but the ability of high executives to rationalize is notorious.

It is striking that those who leave open the loophole of catastrophic danger do not cite examples of such crises in the past or attempt to imagine how one might arise in the future. That is perhaps because a persuasive instance is extremely hard to define. Indeed, it may be impossible. The fact is that if the nation were in immediate danger of being overwhelmed, or even seriously damaged, by some development overseas, it would be an occasion for public alarm and overt remedy. Secret incursions into the affairs of other nations are undertaken precisely because the interest at stake is not sufficient to justify the damage intended. They are clandestine because if they were known to the citizens they would be denounced and prevented. Covert operation is not an "only if" proposition. We are a large country, a powerful country and, as we are constantly telling the world, a free and democratic country. It is absurd to suggest that there are occasions when we must defend ourselves by sending men out into the night with knives in their teeth. And the only way to stop such behavior is to declare it absolutely unacceptable. That is not naive; it is merely self-confident.

Backward Steps

The start made toward giving California farm labor some say in its dealings with the growers has run into an early roadblock. The California Agricultural Labor Relations Board, put together last summer in a laborious compromise worked out by Governor Brown, is now said to be "dead" after the state legislature voted down an appropriation needed to keep alive this instrument for the farm laborers to choose their own union. Apparently the combined pressures of the growers and the Teamsters union, which had not been doing well in the elections against Cesar Chavez's United Farm Workers, was enough to bring this long-delayed process to a halt.

As Ronald B. Taylor reported last week ("Chavez and the Farm Law: Time Running Out in the Fields"), the successes of the UFW drove the Teamster-industry alliance to demand help from the legislature; they got it and money for running the field elections was stopped. It could be just

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a halt, rather than the end, if Governor Brown can, in the next few months, exert enough influence on the legislators to offset the power of agribusiness in Sacramento.

The farm workers' battle for decent conditions has been going on for a long time. It has taken place in the fields, in the political arena, in the media and in the supermarkets through boycotts. It is sad to think that this long and exhausting struggle for basic rights possessed by millions of other workers may once again be concentrated on the difficult boycott effort. But that may happen unless Governor Brown is able to resurrect the fair-elections board he worked so hard to create just last summer.

A New Equation in the Middle East

Anne Tuckerman

An American veto on January 26 prevented the U.N. Security Council from adopting a resolution affirming "the inalienable national right of self-determination of the Palestinian people, including the right to establish an independent state in Palestine," and thus brought the melodramatic two-week debate on the Middle East to a close with no recommendation.

It would be a mistake, however, to suppose that this debate was just one more anti-Israel propaganda exercise in the twenty-eight-year-old conflict. Veto or no veto, there has emerged from this session of the Council a new equation, if not a new formal set of rules, for the settlement of the Middle East problem. The paramount importance of the Palestinian factor in the situation is now recognized by all, including the United States. (See article, p. 169.)

This does not mean that every country—except, of course, Israel—automatically accepts the PLO as the representative of the Palestinians, but recent history has shown that African and Asian terrorist movements that are politically well organized usually mobilize the existing nationalist drive behind them. In many new countries, yesterday's terrorists are today's rulers.

Britain, which abstained in the vote in the Security Council, recognized "the political rights" of the Palestinians; the other European countries and Japan went further. The U.S. delegation did not go beyond accepting "the legitimate interests" of the Palestinian people, but it made much of "new procedures and new ideas, such as the question of additional participants" to be examined within the framework of the existing negotiating process. A State Department paper issued on the day of the vote stated that "the United States is prepared to work with all the parties toward a solution of all the issues yet remaining, including the issue of the future of the Palestinian people."

The United States kept its promise to Israel, which was boycotting the Council because of the presence there of the PLO, to block any resolution which would modify the terms of the settlement laid down in the well-known Resolution 242 of November 22, 1967, and change the negotiating forum of the Geneva conference provided in Resolution 338 of October 22, 1973. U.S. Ambassador Moynihan, under strict instructions from the State Department, did that and no more. He argued the case not on substance but from the legal and formal viewpoint that it would be dangerous to change the existing framework for a settlement and for the negotiations to implement it.

Resolution 242 gives a low priority to the Palestinian question, which it deals with as a humanitarian problem of refugees. Its key provisions, set out as a balanced formula, are Israeli withdrawal "from territories occupied" in the Six Day War, and the "termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force." The latter formulation is meant to guarantee Israel's right to exist.

The Arab-inspired resolution of last week insisted on the withdrawal by Israel "from all the Arab territories occupied since June 1967." The American veto prevented "withdraw from territories" from becoming "withdraw from all the territories," and that is the only meaningful satisfaction Israel can derive from this whole episode. The U.S. administration lost no time in urging Israeli Prime Minister Rabin, then in Washington, to allow diplomatic motion to be resumed by what must be some procedural arrangement to have the Palestinians represented at Geneva. (The argument over the shape of the table for the Paris talks on Vietnam seems like simple logistics by comparison.)

While the United States undertook to assure the failure of the Security Council exercise, the European powers, especially France, took the bull, as it were, by the other horn. They attempted to exact concessions from the Arab extremist camp by adding to its demands the provision of "242" that deals with the right of Israel to independent existence. The Arabs had two choices: present their maximum claims and receive only the votes of the countries already committed to their side, or win a larger and more general support by shifting to a more balanced position. They took the second course. It is significant that the first text, drafted by the PLO, demanded: a state for the Palestinians; a complete Israeli withdrawal (not limited to the territories gained in June 1967), and vague peace negotiations to take place after the first two conditions had been met.

The final text, submitted officially by six "nonaligned" countries and accepted by Syria and the PLO, included the phraseology, analogous to "242," "that appropriate arrangements should be established to guarantee, in accordance with the Charter of the United Nations, the sovereignty, territorial integrity and political independence of all states in the area and their right to live in peace within secure and recognized boundaries."

It is true that Syria and the PLO could find it a tactical advantage to accept such a formula, since the United States had made no secret of its intention to veto the resolution. Nevertheless, the inclusion of such an apparently conciliatory clause marks the first time that the extremist Arab camp has aligned itself with Egypt on

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Israel's right to existence. It is a mere hint. Others came in statements by Syria and the PLO claiming legitimacy for a Palestine state on the basis of the U.N. partition plan of 1948, which also gave birth to Israel, adding that for Israel not to recognize such a state would be "juridical suicide." Perhaps this attitude can be attributed to the fact that the Soviet Union, despite its repeated vituperations against Israel and Israeli policy, never fails to include the right of Israel to exist among the conditions it sets forth for a Middle East settlement, and does not encourage new Arab military adventures. The upper hand gained by Syria and its Palestinian allies in Lebanon may also be a factor.

Much more will have to be said and done in the way of realistic conciliation, especially by the PLO, whose representative, Farouk Kaddoumi, started the Security Council debate with an all-out attack on the "Zionist state" and a reaffirmation of the PLO's goal to replace it by a "democratic and secular state" of Moslems, Jews and Christians, and ended the proceedings with a threat of intensified guerrilla warfare. Such statements can only reinforce Israel's opposition to any dialogue.

It is now clear to all concerned that no movement, except war, can take place in the Middle East without coming to grips with the Palestinian problem. A third "principle" has been added to "242," if not in print, certainly in spirit.

The formula of mutual recognition by Israel and the PLO is often mentioned today as the key to a solution. No such key has yet been manufactured, but if it were what would lie beyond the door it opened? What territory that the Palestinians might consider adequate would not be seen as a threat by Israel? Perhaps that is one of the reasons why the door remains closed. A "just and lasting peace," so often cited as a goal in U.N. documents, is not at hand. Meanwhile, a policy of immobility courts change by force.

ELLIOT RICHARDSON

WHITE KNIGHT ON A GREASED POLE

STEVE NEAL

"Somebody has to be President," Elliot Richardson once told me. "I have the kind of background for the job." The newly installed Secretary of Commerce who last week became the first American to have held four Cabinet posts, has long thought of himself in those terms. In the weeks that followed his dramatic resignation as former President Nixon's Attorney General, many liberals talked him up as their white hope. And just last year Richardson was talking boldly of running for President in 1976 as a progressive third-party candidate—particularly if Ronald Reagan were to emerge as the Republican choice.

But now that Reagan is doing just that, Richardson has rewritten his script. Instead of leading a revolt against the former California Governor, Richardson says he's prepared to support him. Indeed, Richardson will not rule himself out as a prospective Vice Presidential candidate on a Reagan ticket. Although he nominally supports Ford for the nomination, Richardson bluntly declined an offer to head Ford's fund-raising campaign.

Richardson's switch seems to have come about during his return to government. His hints about a new third party are relics of his year in exile—a period which ended in December of 1974 when President Ford appointed him Ambassador to England. Although the London Embassy made no great demand on his talents, Richardson rationalized that it was only a holding position until his appointment as Secretary of State. However, when Ford reshuffled his Cabinet, Richardson was picked not to fill the shoes of Henry Kissinger but those of Rogers C.B. Morton. Not since Herbert Hoover presided over Commerce in the 1920s has such an ambitious bureaucrat been seen there. Richardson makes it clear that he is going to be more than the manager of a lackluster department. He vows to become the new energy czar by heading the Energy Resources Council, a position now somewhat jealously held by Frank G. Zarb. And he also promises to offer himself as garnish for the endless chicken-and-pea circuit of Republican dinners. At his confirmation hearing, he smiled at one Republican Senator's suggestion that he run for the Vice Presidency. Ford, despite Richardson's coolness, recently listed him as one of the possible running mates.

He is not shy about his qualifications for high office. "I've always believed," he says, "that we exist to be used—not just for the sake of others, but the use of our own capacities needs to be developed, exercised and challenged at the highest levels, whether in terms of politics, surgery, mountain climbing or playing a musical instrument. What I know how to do is only fully brought to bear in running complex instruments of government. I am underemployed in any other situation in terms of what I have learned to do."

Richardson began promoting his candidacy soon after the "Saturday Night Massacre." He was surprised and greatly encouraged by the public response to his resignation from Nixon's Cabinet—some 3 million letters and telegrams were sent to the White House and Congress in support of his action. Richardson modestly attributed this phenomenon to a "hunger for a demonstration of willingness to draw a line on an issue of principle." For defying a President by refusing to fire Special Prosecutor Archibald Cox, Richardson was compared to Thomas More.

Almost overnight he emerged from the bureaucratic throng as a heroic figure, a symbol of integrity in an age of corruption. When he addressed audiences of normally

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Pierotti

Elliot Richardson

cynical college students, Richardson received rousing ovations merely for showing up. Thoughtful liberals and political independents said he was just the sort of man to pick up the pieces of government and move the country beyond Watergate. GOP candidates begged him to make appearances for them. Richardson barnstormed through thirty-five states during the 1974 elections—pushing himself with far greater enthusiasm than he expressed for such Republicans as Peter Dominick, Houston Flournoy, or Diarmuid O'Scannlain. He was straightforward in saying that a Presidential race was the ultimate goal beyond these campaign pit stops. Although he proudly notes that twenty-two of thirty-seven Richardson-endorsed candidates were elected, a closer look shows that only three of fifteen nonincumbents won their races.

Richardson was lionized in the British press when he arrived there last winter. The *Daily Mail* typified the feeling about his appointment: "He is cultured, elegant, rich, stylish and a hero of Normandy and Watergate." In a position traditionally held by political fat cats (Joseph Kennedy, John Hay Whitney, Walter Annenberg), he struck the British as a man of stature.

But the honeymoon ended in October when the Special Prosecutor's office publicized the official Watergate report. *The Times* of London called Richardson "something less than the hero some have painted him." And a columnist for the *Daily Telegraph* concluded, "Richardson, white knight of the Watergate scandal . . . emerges with tarnished armor." The Watergate report raised grave questions about Richardson's commitment to integrity and commitment to the Special Prosecutor's independence. According to the report, he tried to gut the Special Prosecutor's charter by narrowing Cox's powers. In a manner reminiscent of L. Patrick Gray, Richardson is said to have asked Cox to let him "screen" all aspects of the investigation. He attempted, for example, to stop Cox from probing White House wiretaps of journalists and administration aides and to prevent him from interviewing Secret Service agents about the critical Nixon tapes.

Richardson has not denied the Special Prosecutor's report, though, to be sure, he has expressed irritation at being cast as a Nixon patsy. His stock explanation: Cox knew he wasn't serious about obstructing the Watergate investigation. To help restore his image, Richardson, the author of the Agnew precedent which kept the former Vice President out of prison, said Ford was wrong to have pardoned Nixon. He then said Nixon's failing "is traceable to flaws in Nixon's own character."

Actually, Richardson was one of Nixon's most loyal lieutenants. He shamelessly flattered his boss by describing Nixon as an intellectual giant ranking with Thomas Jefferson and John Quincy Adams. While Under Secretary of State, he was said to have had private reservations about the 1970 Cambodian invasion, but publicly he stood with Nixon. A delegation of Richardson's Harvard classmates urged him to dissent from the administration line. He coldly ignored their plea. "It seemed baffling to us that a man we knew and seemed to share basic experiences with could have been unmoved," says Spencer Klaw, now a journalism professor at Columbia University. "It was almost like someone you had grown up with and admired suddenly turning up in the Reich Chancellery in 1934."

Unwavering devotion to Nixon prevailed over his principles throughout his tenure as Secretary of Health, Education, and Welfare, where he presided over the administration's civil rights retreat. The pattern continued during his brief term as Defense Secretary when he went along with Nixon's Christmas bombing of North Vietnam. At the Justice Department, Richardson asserted that Nixon had "a very strong case" for not turning over tapes of his Watergate conversations.

Yet after his split with Nixon, Richardson talked piously about the "frightening glimpse of the abuse of power." He capitalized on his mythic image. But civil rights stalwart Joseph L. Rauh was dubious about Richardson's trial balloons about launching a liberal third party. "It's ludicrous for liberals to build up the man who sold out civil rights," he said. "To suggest the possibility of a Richardson third force is absolute nonsense."

Richardson confides that he turned down firm offers to run for the Senate from such diverse states as Illinois, New Jersey and New Hampshire. He also pondered a race against Sen. Edward Kennedy of Massachusetts, his home state. But Richardson is an administrator and manager, not a campaigner. When speaking, he makes it painfully apparent to his audiences that he is not of common clay. This attitude comes through in an anecdote he tells at the expense of former Labor Secretary Peter Brennan who, Richardson chortles, "was with the beer drinkers as usual." Unfortunately for Richardson, the great majority of voters prefer beer to Chivas Regal.

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It was not surprising that Richardson chose to angle for a spot in the Ford Cabinet as his best hope for the Presidency. As Commerce Secretary, Richardson inherits perhaps the grayest and dullest of all Cabinet departments. Since the days of Herbert Hoover, most of his predecessors have concentrated on praising the marvels of big business and trying to make American capitalism more dominant in world markets. The low esteem in which Commerce is held was manifest in the appointment as Deputy Assistant Secretary of one-time Agnew heeler Peter Malatesta, whose chief claim to fame is that he is Bob Hope's nephew. Among the unexciting agencies now under Richardson's control are the federal fire council, patent office, census bureau, national oceanic and atmospheric administration, and the U.S. travel service. If he fails to win the power struggle with Zarb to control energy policy, Richardson will have to settle for being a distinguished Commerce Secretary—which, as a 1924 *New Republic* editorial on Hoover politely observed, "is like saying that he is a big five-footer." □

BEHIND THE ZIONIST POSITION

The Israeli Debate We Never Hear

IRENE L. GENDZIER

The decision of the Israeli Government to boycott the current Security Council decision of the United Nations because of the participation of the Palestine Liberation Organization once again raises questions about the nature of Israeli policy toward the Palestinians and peace in the Middle East. In official declarations from the Rabin government, seconded by the American Zionist establishment which reflects the views of the most conservative elements of Israeli political life, it remains "unthinkable" to deal with the Palestinians and specifically, the PLO, as something other than nameless terrorists. The bankruptcy of this position has long preoccupied non-Zionists and anti-Zionists in Israel. But for the first time, attention is being paid in the American press to groups in Israel that no longer support their government on the Palestinian question. This opposition, erroneously labeled as being on the Left, in reality represents a political spectrum made up of figures who are staunchly Zionist and committed to the principle of an all-Jewish state. In these circles the distinction is made between Israel's relations with Palestinians outside its boundaries and those "Israeli Arabs" within. In the urgency of the immediate political crisis, this separation may be viable, but the issues are inseparable. The situation of the Israeli Arabs, the suspicion with which they are held in Israel, the legal and social discrimination practiced against them, is directly related to Israel's policy toward the Palestinian people, which itself reflects the antagonism toward Palestinian Arabs that has been a part of the Zionist experience.

Recognizing the political character of the Palestinian resistance movement—which the Israeli Government has never done—is, therefore, not the end of the story, but there is no doubt that it is a belated first step in the process of accommodation between Israelis and Palestinians without which peace is not possible. Furthermore, it is an important step for Americans concerned with Israel and the Middle East to be aware of. Dependent on news media that emphasize the monolithic aspect of Israeli political life and that present exclusively the view of the current Israeli administration and its right-wing supporters, Americans in general are ignorant of the nature of Israeli political debate on the Palestinian issue. With few exceptions they have been deprived of the extensive discussions that have taken place on this question, and they have often been prevented from hearing the views of even a "loyal opposition" by the effective strategy of the most hawkish elements in the Zionist lobby in the United States.

None of this is new. What is new is the international context in which the current phase of the Israeli-Palestinian struggle is taking place. The position of the United States on the Palestinians, the growing international recognition of the PLO, and the changing character of the United Nations, have all affected the course of this struggle. To a large extent these factors result from the 1973 October war and its multiple consequences for the Middle East, the Third World and the industrialized West. The change has found expression at the U.N. where, as the passage of the anti-Zionist resolution demonstrated, Third World countries have been able to exercise greater influence through their increased collaboration in the face of Western opposition. The ability of the PLO to win recognition in a variety of international bodies as well as at the United Nations is at least as much another example of this transformation as it is proof of the PLO's success in pleading its cause. Occasional tensions have begun to mar Israeli-U.S. relations as the American Government seeks to stabilize its interests in the Middle East, a process that may entail a shift in its policy toward the Palestinians.

On November 12, Harold Saunders presented before the Special Subcommittee on Investigations of the House International Relations Committee a paper that was the most elaborate sign to date of such a possible change. Saunders at the time was Deputy Assistant Secretary of State for Middle Eastern Affairs; on December 1 he became Director of Intelligence and Research in the State Department. His paper, described by subcommittee Chairman Lee Hamilton as "conciliatory" in its tone toward the PLO, was striking merely because it discussed the Palestinian role in any future Middle East peace. By taking the position that "the Palestinians collectively are a political factor which must be dealt with if there is to be a

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peace between Israel and its neighbors," the paper advocated a new American perception of the conflict. The issue was no longer whether or not Palestinians existed, or could be included in peace talks, but how their presence there could be accommodated. On an altogether different level, the Brookings Institution in Washington published a report entitled, "Toward Peace in the Middle East," in which prominent academicians, many not previously identified with the views of the report, and foreign policy experts associated with the Department of State, offered their formulations of essentially the same position. The need to provide for "Palestinian self-determination, subject to Palestinian acceptance of the sovereignty and integrity of Israel within agreed boundaries," was firmly linked to the interests of the United States in the Middle East.

If there has been an Israeli reaction to the Brookings report, it has apparently been a very private one. The same is clearly not the case with respect to the Saunders paper. Not only did it—understandably, in the light of the official Israeli position—provoke bitter denunciations of the PLO and repeated assertions of Israel's refusal to negotiate with that organization, but it also cast new doubts about U.S. reliability in supporting Israeli policies. Prime Minister Rabin has made it clear that he is not willing to entertain the possibility that the PLO might "soften" its position vis-à-vis Israel, which is to say recognize its existence, and he therefore sees no need to formulate an Israeli response to such a move. The same message was conveyed at the United Nations by Ambassador Chaim Herzog, who presented his government's position with a vehemence surpassed only by the presentations of U.S. Ambassador Patrick Moynihan, who simply restated the Israeli position. There is no doubt that Moynihan's performance won strong support among American Zionists as well as among those closet isolationists who appeared to relish the thought of the United States leaving the United Nations. Needless to say, the two camps were not always allies on the Israeli-Palestinian question.

The enthusiasm for Moynihan's defense of Israel and specifically for his rejoinder after the passage of the anti-Zionism resolution reflected the near hysteria which pervaded pro-Israel opinion. One example will suffice. In the January issue of *Moment* magazine, a relatively new journal of Jewish opinion, Editor L. Fein proclaimed that there was "comfort to be taken in the behavior of the American Ambassador to the United Nations. . . . Rarely has a cause we share been so eloquently championed, rarely has a policy of the United States Government been so infused and enlarged by personal conviction." Referring to the anti-Zionism resolution, Fein observed that "whatever the debate among Jews on Zionism as of November 9, 1975, the General Assembly resolution guaranteed that as of November 10, all Jews had become Zionists." The language was strikingly similar to that employed by Norman Podhoretz in an article he wrote after the October 1973 war, "Now Instant Zionism," which appeared in *The New York Times Magazine* of February 3, 1974. The urge to describe American Jewish opinion as solidly behind Israel was not new, neither was it new to condemn critical opinion of Israeli policies. The assertion of a debate on Zionism in Fein's article is exaggerated, since, in spite of attempts to open the subject in *Moment* itself, it is the one subject that has been virtually taboo in the American Jewish community. There has been discussion about who ought to be allowed to debate the issue, which is not quite the same thing. Not surprisingly, those considered best qualified to offer opinions on Israel and Zionism were invariably those with the least inclination to be critical in any meaningful sense. While many succumbed to the pressures exercised so effectively by established leaders of the American Zionist community—referring, for instance, to critics of Israel as anti-Semites—the increasing and overt intolerance of this hierarchy has begun to worry some of its own members.

Implicit in the arguments of the conservative protectors of American Zionist opinion has been the notion that a total identity of views, if not of problems, exists between American Jewry and its Israeli counterpart; an assumption which is doubtful at best and which touches on the sensitive issue of Diaspora-Israeli relations. Beyond this was the assumption that collaboration between organized American Jewry and the right wing of Israeli political life was never to be challenged or exposed. This collaboration has been effective in that both groups have achieved the kind of support they needed in their mutual camps, to the detriment of both societies. That there was a time, before and after the state of Israel was formed in 1948, when American Jews were not afraid to think critically about Palestinian Jewry and Zionism may be an unwarranted speculation. Yet there was a period, ironically the one when the Palestinian struggle was at its peak in 1948, when Jewish periodicals in this country showed a willingness to confront some of the issues involved in Palestine that have since become almost forbidden. Consider *Commentary*, for instance, which today supports the policy of the Israeli Government with no reservations of any significance, and the same magazine nearly thirty years ago. A prominent journal of Jewish opinion, the *Commentary* of the past offered its readers a wide selection of interpretations of Palestinian problems. All of its authors on this subject were Zionist in that they supported the existence of a Jewish homeland in Palestine. But what is remarkable is that by reading some of their articles it was possible to grasp Palestinian realities and not merely the favorable and restricted images prepared for American Jewish consumption by spokesmen for particular political circles.

No subject was broached as often as that of Jewish-Arab relations, something which continues to haunt current Jewish writers but in an entirely different manner. For instance, what distinguished the earlier pages of *Commentary* from those it publishes today was the willingness to confront without venom the Achilles heel of the Zionist experiment—its avoidance of the Palestinian issue. This period was closer in time and in emotional experience to World War II and the holocaust, and yet proximity did not interfere with the discussion of the situation in Palestine. Those torments were certainly not used, as they have been since, as a weapon to prohibit the open discussion of Palestinian-Israeli problems. Consider the article of Moshe Smilansky, "A Palestinian's Solution," which appeared in March 1946, and which argued against Jewish statehood on behalf of membership in the British Commonwealth, an imperialist position which offered reasons for opposing statehood.

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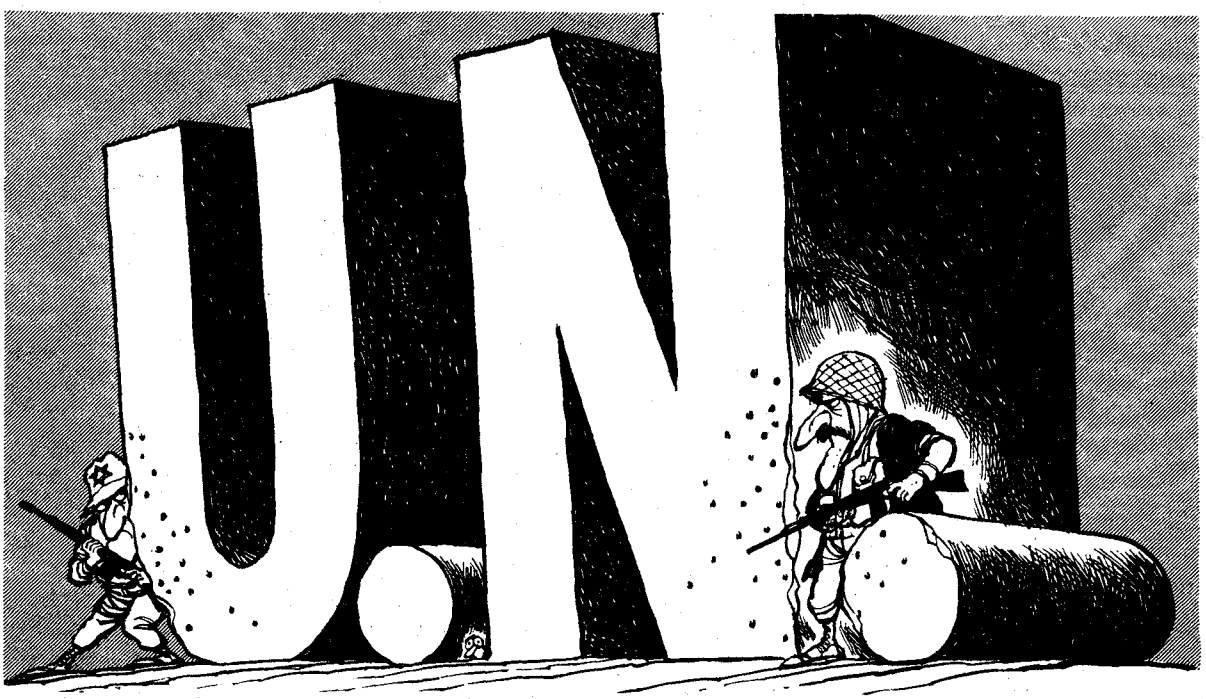
Even more startling in its prophetic prediction of Israeli dilemmas was the article by Hannah Arendt, published in May 1948 on the eve of the partition of Palestine. Both Smilansky and Arendt were Zionists, at least at that period. Arendt, who had personally experienced the holocaust and who had lived in Palestine, did not hesitate to criticize the increasing uniformity of opinion which she felt was contaminating Palestinian political life, and which was evident among American Jews as well. She referred to this characteristic of the modern age as an expression of "fanaticism and hysteria," which was to be fought. Though clearly committed to the concept of a Jewish homeland, and enthusiastic about the kibbutz experiment despite its exclusivity, she was alarmed by the mentality she saw developing around her. She was aghast at the tendency to label all gentile opinion as hostile, an attitude she condemned as "plain racist chauvinism" and "out of touch with the realities of the world." No reality was more immediate, more pressing, and more liable to be evaded by the revisionist Zionists who triumphed in public support in the United States after 1942, as they had in Palestine, than "the presence of Arabs in Palestine, a reality no decision could alter—except, perhaps, the decision of a totalitarian state, implemented by its particular brand of ruthless force."

To argue in this fashion today in American Zionist circles is uncommon, to say the least. Yet it was possible for Hannah Arendt to insist with calm conviction that the idea of Arab-Jewish cooperation "is not an idealistic daydream but a sober statement of the fact that without it the whole Jewish venture in Palestine is doomed." It was not even sympathy for, let alone a just appreciation of, the Palestinian Arab position that marked Arendt's position. She merely reasoned with total realism when evaluating the future of the Jewish community in Palestine. The conviction that Jewish statehood ultimately threatened the "Jewish homeland" precisely because it could come into being only against the wishes of the Palestinian and Arab peoples led Arendt to champion U.N. Trusteeship. "It would have the advantage of preventing the establishment of a sovereignty whose only sovereign right would be to commit suicide." Statehood was proclaimed and sovereignty established but the essential problem of Israeli-Palestinian relations appears no closer to solution than it was when Arendt wrote. Now, as then, it is a truism, as Arendt said, that in the Jewish establishment "only schlemiels prefer truth and negotiation to propaganda and machine guns. . . ."

The uniformity of opinion among American Jews and Israelis is by and large worse than it was when Arendt penned her article. Yet even today there are Israelis—and they are not the "non-Zionists" about whom Arendt wrote with favor, but members of the Israeli political establishment—who argue that Rabin's policy is suicidal and that a policy of no negotiation with the PLO and the Palestinians in general is no policy at all. Yitzhak Navon, chairman of the Knesset Committee on Security and Foreign Affairs, urged the government to state that it was prepared to "conduct negotiations with any Palestinian elements, bodies or organizations which are prepared to fulfill three conditions: to recognize Israel and its right to exist; to obligate themselves to refrain from terrorist acts; to assent to Security Council Resolution 242" (*Yediot Aharonot*, November 28). The Minister of Housing, A. Ofer, responding to the Saunders paper, suggested that the Israeli Government take the initiative and declare itself prepared to negotiate with Jordan and with all Palestinian elements that recognize its existence (*Haaretz*, December 2). Such expressions of dissent are omitted from the American coverage of Israeli politics. Instead one hears repeatedly of Rabin's reasoning or the feeble attempts of Foreign Minister Allon to identify Israel's plight with that of the



Oliphant, The Denver Post

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FLN in Algeria, the Mau Maus in Kenya or the Congress Party in India (*Time*, January 19), none of which movements parallels Israel's struggles with its neighboring states and none of which it supported.

Recognizing the weaknesses of Israeli policy toward the Third World and Arabs in particular is vitally important to a consideration of the current phase of the Israeli-Arab conflict. No matter how much support the Israeli Government of Prime Minister Rabin enjoys, there is still a small body of influential political opinion that has been casting doubts on its Palestinian policy and arguing in favor of a political resolution of the conflict, with conditions of the kind noted above. Yet this body of opinion, until recently and then only in restricted circles, has been almost entirely ignored by the American media and systematically cried down by the American Jewish community. It is a situation with which a number of Israelis, even those in the establishment, are familiar. In the May-June 1975 issue of *New Outlook*, an Israeli periodical published in English, retired Gen. Mattiyahu Peled, who had once served under Rabin, summarized his impressions of the American Jewish community. They were not flattering. In "American Jewry: More Israeli than the Israelis," Peled referred to the "blindly chauvinistic and narrow-minded" character of the American community. He described the increasing gap after the October war between American Jewry's position and that of the Israelis, some of whom had begun to question their government's policies. He expressed disappointment at the marked lack of realism in American Jewish circles that did not realize "the danger of prodding Israel once more toward a posture of calloused intransigence." And he labeled as "altogether preposterous" the denunciation of critics of Israeli policy as anti-Semites. Above all, Peled questioned the political and military intelligence of those who insisted upon retaining for Israel the territories occupied in 1967 instead of urging their return in exchange for peace. He did not question Zionism or its relation to the overt anti-Arab discrimination in Israel; he merely argued for an approach to the Palestinian-Israeli conflict different from that proposed by the Rabin government. Yet he found a cool reception among well-placed pro-Israel lobbyists, who left no doubt that they favored the most hawkish solution to Israel's situation. Peled suggested that these supporters of Israel were in fact working for a particular "school of political thinking in Israel at the expense of others"—an interesting thought for Americans seeking information on Israeli politics in the light of recurring Mideast crises.

It is clear that Peled is no revolutionary. Neither are his colleagues in the recently formed Israel-Palestine Peace Council (IPPC), a loose coalition of establishment figures and intellectuals who advocate direct talks with Palestinians, including the PLO, as well as the establishment of a Palestinian state alonside Israel. In a rare gesture of recognition, the IPPC was described in *The New York Times* (Terence Smith: "Israeli Group Urges Palestinian Talks," January 13), although one may wonder how the article was understood by American readers who seldom hear of this side of Israeli political life. Members of the IPPC are referred to as "doves" in their opposition to the Israeli Government's intransigent position on the Palestinian question. Yet they are nationalist supporters of the Jewish state, whose criticism of government policies toward Israeli Arabs as well as toward West Bank Palestinians remains by and large on the level of pragmatic politics. They have avoided dealing with the more difficult problem of Zionism's attitude toward the Arabs per se. Without exception they accept the principle of a Jewish state and dissociate themselves from the anti-Zionist Left in Israel, including Rakah, the Israeli Communist Party, which has recognized the PLO and advocated negotiations with it (*Haaretz*, December 3). The membership of the coalition, its supporters and its political composition, make it apparent that it differs from the ruling circles primarily in its dissent on the Palestinian question. But even with this consideration in mind, it would be difficult to conceive of a comparable group of influential American Jews who would be prepared to present an alternative to the hawkish solutions to the Israeli-Palestinian conflict advocated by the pro-Zionist lobby in the United States.

The alarming paradox remains that this lobby continues to promote the positions of a certain segment of the Israeli establishment, the most hawkish one, while belittling or masking signs of Israeli dissent no matter what its source. Thus, while a number of Israelis close to or in government circles are coming to realize the inevitability of dealing with the Palestinian issue on a political level, their American supporters, unable or unwilling to face the question, remain mired in the dangerous fantasies of military solutions. □

'BLUEPRINT FOR TYRANNY'

CONGRESS OVERHAULS THE LAWS

STEPHEN GILLERS

Watergate. The Pentagon Papers case. The antiwar movement. Law and order. The trials of Daniel Ellsberg, the Berrigans, the Chicago Seven, Dr. Spock and John Ehrlichman.

These and other events of the 1960s and 1970s not only had spectacular political repercussions but also confronted our courts with important legal questions, some of which remain unresolved. The fifteen members of the Senate Judiciary Committee are now debating a proposal for new and controversial legislation that attempts to answer many of these legal questions, including such basic ones as the power of the President to keep information from Congress and the people, the propriety of government officials committing crimes in the interest of national security, and the right of the press to publish alleged government

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secrets. Nor is that all. The proposed law, in the form of a bill labeled S.1, also contains a massive revision and reorganization of nearly all of the criminal laws enforced by the federal government; it is the first such codification in American history. If S.1 becomes law, as it is likely to do in one form or another, it will markedly influence our system of government and affect the life of virtually every American citizen for decades. Yet the public is almost wholly unaware of it.

"I think possibly this is the most involved and comprehensive measure that's ever been presented to the Congress of the United States," says Sen. John L. McClellan, who introduced S.1 in January 1975 and who, despite the statement above, contends that it does not appreciably change current law. Others see it differently. S.1 has also been called "a blueprint for tyranny," "a dangerous piece of legislation," and "the most sweeping assault against democratic self-government since the Alien and Sedition Act."

Since most of S.1 modernizes an outdated criminal justice system in terms acceptable to nearly everyone, the accelerating debate really focuses on a comparatively small portion of the 750-page bill. But though short, the provisions involved would make fundamental, even radical, changes in the areas of law with which they deal. They would give the President more power to keep information secret and to prosecute officials who reveal those secrets and journalists who print them. They would narrow the insanity defense to the point that, for practical purposes, it would no longer exist. They would recognize the validity of the "I was just following orders" or Watergate defense. They would also reintroduce capital punishment and make it mandatory in some cases, increase possible prison sentences, broadly define what has been called the "slippery" crime of conspiracy, and encourage the use of informants to infiltrate organizations and entrap unwary individuals.

For a bill that raises such crucial questions about our criminal law and basic freedoms, S.1 had an innocent, almost scholarly birth, and a development that tells much about how important legislation is produced. It all started in 1966, when Rep. Richard H. Poff of Virginia introduced legislation to create a commission to codify (lawyer talk for overhaul and organize) the unwieldy accumulation of federal criminal laws. Former California Gov. Edmund G. Brown became chairman of the commission, Poff became vice chairman and ten lawyers, judges, Senators and Representatives were appointed to join them. Former Supreme Court Justice Tom C. Clark agreed to head an advisory committee and Prof. Louis B. Schwartz of the University of Pennsylvania Law School became director of a large staff that for a time included John W. Dean III, until he went to work for President Nixon in 1969. The commission began its formal work in 1968 and met regularly for three years. In 1971, it submitted its final report to the President and Congress. The commission's members were not in total agreement, however. The Senate members, McClellan, Roman L. Hruska and Sam J. Ervin, all dissented on key provisions of the final report. "We were 9 to 3 on almost every issue. Even Poff was with us," says Governor Brown, referring to the former Congressman's conservative image.

At this point there were two separate but parallel developments. Governor Brown and Professor Schwartz had seen themselves as draftsmen whose job was mainly to revise and modernize the criminal law in a professionally competent way. But whatever the possibility for such a project when the Brown commission was created in 1966, after the Ellsberg trial, the Pentagon Papers case and the then successful law-and-order approach to politics, codification presented an opportunity too tempting for elected officials to ignore. In 1971, McClellan, who was and is chairman of the Senate Subcommittee on Criminal Laws and Procedures (ranking Republican: Hruska), began two years of hearings on the Brown commission's proposals. In 1973, the two Senators introduced legislation which, though it relied heavily on the commission's work, also offered many changes. When translating that work into legislative form, the Senators repeatedly substituted their minority views on punishment, drug offenses, conspiracy, capital punishment, national security, gun control and other issues for the position of the Brown commission majority. Except in the case of gun control, the McClellan-Hruska position reflected a "get tough on crime" attitude.

The Senators weren't the only ones attracted by the codification effort. After thanking the Brown commission for its work, President Nixon apparently also saw the political advantage of producing a criminal code. In 1971, he set up a special unit in the Justice Department, then still run by John Mitchell, to rewrite the Brown commission's proposals. In March 1973, McClellan and Hruska, at the President's request, introduced the Nixon codification proposal to be considered by Congress along with their own.

The Nixon bill made McClellan and Hruska's recommendations seem enlightened. It contained harsher sentencing provisions, severely limited the insanity defense, extended capital punishment, and increased the government's power to control the flow of information and interfere with First Amendment freedoms. Professor Schwartz labeled the Nixon approach "a program of primitive vengefulness." But the main difference between the McClellan-Hruska bill and the Nixon version was in approach. While the first was ideologically conservative, the second was politically conservative. The distinction is important. McClellan and Hruska's proposals seem to be based on a consistent philosophy about the appropriate relationship between the rights of persons accused of crime and the power of the state to catch, convict and punish them. Nixon's response, on the other hand, reflects a willingness to use codification as a means to enhance his own political power. For example, it was his bill that introduced extensive provisions to strengthen the President's power to maintain secrecy and to prosecute the press for printing broadly defined "national defense" information. And it was the former President who chose to politicize the insanity defense, not even an issue at the time, by making

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an inaccurate speech attacking it as a loophole for criminals and by proposing a substitute insanity defense that was more restrictive than those used in most countries of the world for more than a century.

With both the Nixon and the McClellan-Hruska bills before the Senate, additional hearings were held by the criminal laws subcommittee during 1973 and 1974. Eventually, the Justice Department, working with Senate staff members, drafted a new, composite bill and McClellan and Hruska introduced it in January 1975 as S.1, the first Senate bill of the 94th Congress. It resembled all three of its parents. Most of it reflected the lawyerly and noncontroversial modernizing of the Brown commission. But the rest, as if written in a different language, had attributes both of the McClellan-Hruska bill and the Nixon bill—a little of each. "It's like a two-headed being," one observer commented. "Everything is ordinary from the neck down, but you don't really notice that once you've seen both heads."

After S.1 was introduced, two events foreshadowed the coming debate. No doubt sensing the growing concern over the bill among civil liberties groups, the American Bar Association and others, McClellan and Hruska added softening amendments to its national security provisions. They then began an attack on the "misleading" criticism of the bill, contending, incorrectly, that S.1 does "little more than carry forward present law [in a] new style." At the same time, the Senators gave hints of further compromise and expressed confidence that "all interests can be reconciled." Hruska even proposed ten amendments of his own to meet "the need for tempering some of the provisions" of S.1. His proposal came two days after the American Bar Association had narrowly endorsed the bill "in principle" but with two dozen reservations. If the analogy to a two-headed being can be carried a step further, the Senators' clear message was that, in order to make the bill more seemly, they were willing to consider chopping off one of its heads—no doubt Nixon's.

The second event foreshadowing the division over S.1 occurred when Sen. Birch Bayh, about to announce as Presidential candidate, found it politically necessary to remove his name as a co-sponsor of the bill. Bayh, the most liberal and therefore the most visible supporter of S.1 from the outset, said he no longer believed he could make changes in the bill as an insider, as he had hoped, and that he would therefore "do everything I can to see it defeated," unless eleven proposed amendments were adopted. "S.1 has come to be viewed by many people as a symbol of repression," Bayh explained.

Whether Bayh and other S.1 opponents can successfully stop or amend the bill will apparently depend on three factors that currently define the accelerating debate—although none of them, strangely enough, is directly related to the merits of the bill itself. The factors are knowledge, glory and the 1976 Presidential election. The knowledge issue arises from the fact that it is the conservatives who are driving the codification steamroller and the liberals who are trying to stop it. Or, as Sen. James Abourezk, a liberal opponent of the bill, puts it rhetorically, "Why are we taking pot shots at their bill? Why don't we have our own bill?" The explanation is that there is a wide gap of expertise between S.1's supporters and its opponents. The liberals have not been doing their homework.

At the time when McClellan and Hruska and the Justice Department set about writing their codifications, two other things should have happened but did not. First, no equivalent study was given to the project in the comparatively liberal House Judiciary Committee because former Chairman Emanuel Celler "was reluctant to invest in the sort of expertise that we would have required to translate the Brown commission majority into a bill," according to Rep. Robert Kastenmeier, a member of the commission and the Judiciary Committee. Second, the liberal members of the Senate criminal laws subcommittee, their fears possibly allayed by Bayh's sponsorship, also did not get actively involved in the work of codification. As a result, S.1 opponents suddenly found themselves last spring confronted with an unacceptable bill but with neither the skills necessary to challenge it technically nor the united front or leadership required to divert it politically.

And then there is glory. Senator Hruska is retiring at the end of the current Congress and Senator McClellan, who is 80, will retire when his term expires in January 1979. Both men see successful sponsorship of a new federal criminal code as an appropriate conclusion to long Senate careers. And in another way, time works against McClellan and Hruska. The liberals are in line to control both the criminal laws subcommittee and the Judiciary Committee. Any concessions McClellan and Hruska are not willing to make now will be easier to win later when they will not be on hand to defend their work. No doubt recognizing that he can no longer afford the luxury of waiting out events, McClellan, on nearly every occasion when he has spoken publicly on the bill, has insisted that there is "nothing in it that is sacrosanct" and that it is only "a beginning."

Finally, there is the 1976 Presidential election. President Ford has announced his support of S.1 with two reservations. He has pronounced the punishment provisions not sufficiently severe and has encouraged further debate on the national security sections. Ford's endorsement speech was not of the ringing and merciless "get-tough" type that Nixon customarily used to introduce anti-crime proposals. Ford is obviously being cautious. The extent to which he is willing to work for S.1's passage will likely be influenced both by his perception of whether law and order is an acceptable 1976 campaign issue, after the dishonor of its leading proponent, Richard Nixon, and by the fact that two of his possible opponents, Senators Bayh and Kennedy, actively oppose the bill. Even if Ford decides to raise the law and order issue, he may still not want to identify too closely with S.1, in view of its strong connection to the Mitchell Justice Department and the Watergate cover-up. For the same reasons, Kennedy, Bayh and other prominent Democrats may see leadership in opposition to S.1 as a way to identify themselves in the public mind with all that the Nixon administration was not. To a lesser degree, these factors will also influence candidates for the House and Senate.

Politics, glory and expertise. The accidental convergence of these three influences will determine the criminal laws of the nation and affect the lives of Americans for a generation or more. Here, then, are the major controversial

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provisions of S.1 and some of the improvements it offers.

National Security. The most dramatic effects of S.1 would be felt in its espionage sections, which would make it harder for the press to report what the government is up to and easier for the government to lie. The crime of espionage and the First Amendment both address themselves to the same commodity—information. Espionage laws seek to limit it, the First Amendment to encourage it. A clash is almost inevitable. The four main espionage sections in S.1—one new and three expanded—are so obviously designed to strengthen the government's position in a future Ellsberg or Pentagon Papers case that they all but have the names of these cases in their titles. An example will show how they would work.

Let us say there are rumors that the Department of Agriculture has given the Defense Department a powerful new herbicide which could gravely affect a nation's civilian population. The President, asked about this at a news conference, firmly denies the rumor. Meanwhile, a troubled Agriculture official, knowing the story to be true, gives a sympathetic Senator classified documents that prove the charges without revealing the herbicide formula. The Senator hands over the documents to an aide, who prepares a report. A newspaper is given a copy of the report and the documents and prints them. Under S.1, who in this story would be guilty of a crime?

Everybody who told the truth. The Agriculture official would be guilty of disclosing classified information, a new crime intended to apply in future Ellsberg cases. The official, the Senator, his aide and the reporter who gets the documents, his editor, and the newspaper they work for would all be guilty of "mishandling national defense information," a term that is broadly defined to include anything that even "relates" to military planning, communications or weaponry or to the intelligence activities, estimates or methods of the United States, unless it has been officially released. If, as seems certain, the same information "could" be used to prejudice American interests or to the advantage of a foreign power, all would also be guilty of "disclosing" national defense information, a more serious crime.

But that's not all. If the information is "communicated" to a foreign power, the participants would all be guilty of espionage and subject to the death penalty. For purposes of S.1, release by the press is indistinguishable from giving information directly to a foreign power—the word "communicate" is carefully defined to mean "make available by any means." As a result, espionage will be committed whenever the press prints or broadcasts national defense information, regardless of the importance of the information and regardless of whether the defendant intended to harm the nation, had reason to believe the nation would be harmed, or even knew he was dealing with national defense information. Before the death penalty could be imposed, however, a jury must determine that the defendant knowingly created a "grave risk" that the national defense would be "substantially impaired." If this finding is made, death is mandatory.

If the newspaper chooses not to publish the information, S.1 still requires that, without being asked, it "promptly" deliver the classified documents to a federal official. This assures that the government would find out about the leak and could then subpoena the reporter before a grand jury to learn his sources. Since the Supreme Court has refused to recognize a newsman's constitutional privilege, the reporter would have to talk or be jailed for contempt. After the first such publicized case, potential sources would recognize the risks and leaks would stop. The government would be more secure in its ability to keep information from the public and even to lie.

Punishment. S.1 favors longer and more certain incarceration for most crimes and reinstates capital punishment. "The total effect of S.1 is to discourage the use of community alternatives to incarceration," says Prof. Herbert S. Miller of the Georgetown University Law Center. For example, S.1 mandates prison terms for some crimes, thus removing the trial judge's traditional discretion to grant probation. The President's proposals would further assure incarceration by removing even the parole board's power to release certain prisoners. S.1 does away with the concept of "good time," under which a prisoner who stays out of trouble can have his sentence reduced by as much as one-third. Finally, S.1 increases maximum sentence length in some cases and maintains a hard line for drug offenses, without distinguishing between defendants who traffic in drugs for commercial gain and those who do so only as part of their habit.

Consider a defendant convicted of the unarmed robbery of mail from a postal employee. The maximum incarceration period is now ten years; S.1 would increase it to fifteen. Selling 4 ounces of heroin could result in a fifteen-year sentence under current law, but thirty years under S.1. A defendant who had sold a friend even a small amount of an opiate without profit would probably receive a short jail sentence or even probation under current law. Under S.1., however, the judge would be required to impose a five-year sentence, nonparolable for one and a half years if the Ford amendments pass. But S.1 has a strange sense of priorities. If the same defendant stabbed his victim to death in the course of a rape, he could get as little as one day in jail. The ABA believes that S.1's maximum terms are too long. Under its standards, maximum prison terms normally should not exceed five years. The ABA's "in principle" endorsement of S.1 accordingly excludes the incarceration provisions.

The Supreme Court outlawed capital punishment in 1972 because of the arbitrary way in which it was applied. S.1's response is to mandate death for treason, sabotage, espionage and murder, thereby presumably removing the elements of discretion and arbitrariness. But even these crimes are not always capital. Currently, the bill provides eight sub-categories of murder, some so vague that they make arbitrary application inevitable. For example, death is required if a murder is committed "in an especially heinous, cruel or depraved manner" or if a defendant "knowingly created a grave risk of death." On the other hand, it would be excluded if the defendant was under "substantial duress" or his "mental capacity was significantly impaired." These words are so imprecise that they introduce the very potential for arbitrariness the Supreme Court rejected.

Insanity. S.1's preference for longer and more certain incarceration is also reflected in a definition of insanity that is so narrow that lawyers and psychiatrists testifying

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before the Senate criminal laws subcommittee have called it "retrogressive, punitive and discriminatory." Under S.1, a person who fires a gun at another under the impression that he is brandishing a carrot would be acquitted, but a person who committed a crime under what he truly believed to be God's command would go to prison.

Aside from the fact that the criminal law will quickly lose its moral force if the courts start jailing obviously deranged people, the harshness of this provision is even more apparent when considered in light of three additional facts. First, today when most federal courts use a liberal insanity standard, there are estimated to be only about 100 insanity acquittals a year. It is not easy to convince a jury to acquit on this ground, no matter what the test. Second, under S.1 even a defendant acquitted by reason of insanity is not automatically set free. He is instead hospitalized until he is no longer a danger. Any pressure to narrow the defense to protect the public from acquitted insane defendants is therefore absent. Third, S.1 permits the judge to hospitalize rather than imprison a mentally ill but technically "sane" defendant, but a hospital sentence *must* be for the maximum, subject to reduction if the hospital says care is no longer needed. A mentally ill convict is therefore actually in a worse position than one who acts "in cold blood." In short, S.1 brings law and order rhetoric to an area of criminal law where compassion may be most appropriate and, given the small numbers involved, most feasible.

Public Duty. If a public official commits a crime, should it be a defense that he honestly believed that he was legally "required or authorized" to commit it? A number of Watergate defendants tried to raise this defense—and Nuremberg defendants did so before them—but it was uniformly rejected by the courts. S.1 would change the law to recognize the Watergate defense.

Conspiracy and Entrapment. Broad conspiracy doctrine and a free use of undercover agents to provoke criminal acts can be used by government to stifle protest of its policies. The numerous "conspiracy" and other trials of the last decade, from Spock to Chicago, from Harrisburg to Gainesville, can all be cited as evidence that the criminal law can and has been used by the state against its political opponents. S.1 continues the potential for such use by adopting a broad definition of conspiratorial liability and a permissive approach to the use of undercover provocateurs.

S.1's Improvements. The benefits of S.1 are a strong incentive for Congress to compromise these and other controversial sections of the bill. Among the many improvements it contains are:

—A program to compensate victims of crime.

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—Stricter provisions on white-collar crime and for consumer protection.

—Sex discrimination is made a civil rights offense.

—A rape victim's testimony need not be corroborated and questions about her prior sexual history are severely limited.

—Appellate review of sentences is provided for to correct current disparities.

—It will be a crime to obstruct a federal political campaign, an important provision after Watergate.

S.1 would also remove anomalies and inconsistencies in current law. There are now, for example, three different penalties for defrauding the government—one, five or ten years—depending on the section under which a defendant is prosecuted. There are crimes that belong to another age, such as "seduction of a female passenger," which provides up to a year in jail if a seaman "seduces and has illicit connection" with a female passenger and then fails to marry her on reaching shore. Until now, offenses have grown haphazardly, with the alphabet as the only organizing scheme. S.1 would group offenses rationally, on the basis of the interest to be protected. Finally, S.1 introduces a unified theory of federal jurisdiction, now sadly lacking, and consolidates hundreds of separate provisions that prohibit basically the same conduct.

While it is not possible to pass a criminal code without, for example, provisions for sentencing and laws against espionage, it is also true, as Representative Kastenmeier says, that S.1 "doesn't have to be the repository of all of the highly controversial issues" now before Congress. Some of S.1's debated sections can be resolved simply by omitting them. Conspiracy law, entrapment and the insanity defense can all be left to judicial development, as they are now. Capital punishment is already the subject of separate legislation. Although omission is not exactly the way to come to terms with an issue, here it would have the beneficial effect of facilitating the passage of highly useful legislation.

Sentencing, being quantifiable, is peculiarly suited to legislative compromise, though there might be a battle on the wisdom of mandatory minimum sentences. But it is the espionage provisions (and to a lesser extent treason and sabotage) that present real problems. Although these provisions are traditional subjects for the criminal law, as S.1 defines them they are concerned not with crime but with sovereignty. They use the criminal law, and the threat of long prison terms and even death, to give the executive branch monopoly control over the information other branches of government need to do their jobs. And since information is essential for self-government, and therefore sovereignty, S.1, in 2 of its 753 pages, actually upsets the delicate balance between the executive and other branches of government and between government and the people. A new criminal code is not worth the price of a new system of executive government. The espionage offense must be changed, starting with a much narrower definition of national defense information. A beginning may lie in amendments submitted by Senator Bayh. Under these, no one in the herbicide hypothetical would be guilty of a crime, though the Agriculture official would be subject to administrative sanctions.

If the Senate passes the bill, the House will still have to consider it, but most of the groundwork already will have

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been done. There is strong pressure to compromise the troubling provisions of S.1, though the exact balance will depend on the interest and ability of liberals in the Senate to suggest and support alternatives. That, in turn, will depend on popular reaction to S.1 as its provisions become better known.

The likelihood is that the country will have some kind of new federal criminal code before the end of the decade. But that might not be soon enough for one section of S.1, which is either farsighted or pessimistic depending on your point of view. It would give the United States jurisdiction over any crime committed against an American on the moon, a sad recognition that the crime problem will go wherever we do.

OFF TO THE RACES

The First 'New England' Primary

GORDON L. WEIL

The New Hampshire primary, New England's oldest winter carnival, will never be the same. It is rapidly losing the first-in-the-nation glamour that gave it a significance in the Presidential selection process well beyond its true weight. What's more, this year at least, the campaign lacks the vital ingredient that often made the races there so compelling—the presence of a candidate you love to hate.

The change began when Barney Frank, a member of the Massachusetts legislature from Boston, became tired of watching the New Hampshire primary dominate the national political consciousness, and William Loeb, publisher of the Manchester *Union Leader*, dominate the New Hampshire primary. He proposed, accordingly, that Massachusetts and other New England states reschedule their primaries to the same date as the Granite State contest, thus creating a first-in-the-nation regional primary.

It did not work out that neatly, mainly because the New Hampshire legislature made evident its willingness, if necessary, to slide the date all the way back to January 1 in order to stay ahead of Massachusetts. When the Bay State set its primary on March 2, New Hampshire moved back to February 24. Further upstaging might have been embarrassing to legislators in both states, but with the two great days now only a week apart New Hampshire has begun to lose some of its luster.

Its prominence as an early-warning system was also diminished by the nation's discovery of Iowa. The caucuses there on January 19 made the evening television news and page one across the nation, whereas four years ago they caused hardly a ripple. The Massachusetts and New Hampshire campaigns were quickly woven together because of their proximity in space as well as in time. Since New Hampshire has almost no commercial television of its own, most of its voters live in the Boston media market and are exposed to the candidates' commercial "spots" on the Boston stations.

Former Georgia Gov. Jimmy Carter did more than anyone else to create a New England contest, simply by acting as though there were one. He recognized that Maine caucuses would be held in the weeks preceding the New Hampshire primary and began cultivating Democrats there at a time when most of the rest of the pack conceded the state to Muskie. Carter also wanted a preferential primary in Vermont, even though the delegates are chosen in caucuses, and hurried to get on the ballot there as soon as one was scheduled for the same day as Massachusetts. By running everywhere he could and starting early, Carter set his competitors to worrying about his ability to pick up delegates and, more important, momentum, with a good showing in New England. Consequently, they came increasingly to fight on his terms.

As a result, the four Northern-tier states have been getting a lot of attention from the candidates and campaigns of both parties. New Hampshire and Massachusetts primary nights are certain to be national media events—sponsors will always flock to an electronic scoreboard—but a tour of campaign headquarters in Boston, Manchester or Concord is apt to make a reporter feel somewhat defeated. For, compared with 1964 starring Barry Goldwater, 1968 with President Johnson and Vietnam, or 1972 with President Nixon and Vietnam again, the primaries this year lack passion. There is no crusade, no armies of student canvassers. Very few headquarters are packed with people stuffing envelopes or telephoning voters. The campaign managers look more like junior executives, working nine to five, than the bleary-eyed and intense young pols of the past. Activists do not feel that they must elect their candidate in order to save the nation. The Reagan people can live with Ford; the Bayh people can live with Carter. Perhaps nobody else's activists can live with Wallace, but they don't think it will come to that.

The results of the primaries and caucuses are thus left largely to chance and to the influence of the media. The ability of the candidate to win is based more on image than on issues: Reagan as a strong leader, Ford as the President on the job, Shriver as the Catholic scion of the Kennedy clan, Bayh as a man who looks like a President, Harris as William Jennings Bryan, Carter as a very smart peanut farmer, and so on.

Of course, this will change somewhat as the end of February approaches. Canvassers will be shipped in from other states. The candidates have begun already to lob charges and countercharges and the political temperature will rise as the days pass. Television and radio commercials and direct mail solicitations will increase; the rivalries will begin to raise welts. But few, if any, participants or onlookers will experience the intense emotions of the McCarthy or McGovern campaigns.

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Haynie, The Courier Journal (Louisville)

"And Here at the New Hampshire Olympics, Governor Reagan Is Off to a . . . oops!. . . Flying Start!"

The big question of the New England campaign is whether it will narrow the field or, because of the lack of passion, leave it muddled. The answer is that the national campaign is really a series of elimination contests. Despite the federal matching funds, candidates who do poorly along the way will find their finances drying up. Because the curtain-raising New Hampshire primary has now turned into a true regional test, New England will do much to choose the nominees of both parties.

On the Republican side, Reagan has been the early leader in New Hampshire. He makes a strong appeal to conservatives, who dominate the party there, but he has also managed to put a moderate face on his campaign, by downgrading the influence of the surpassingly conservative Gov. Meldrim Thomson, who was not picked even as a Reagan delegate. His campaign chairman is former Gov. Hugh Gregg, identified with the moderate GOP.

Naturally, Reagan continues to welcome conservative support and his most valuable backer is still William Loeb. The *Union Leader* is devoting all of its editorial artillery to salvos against "Jerry the Jerk." The new primary date no longer falls on the same day as the town meetings, and that raises the influence of the city vote on the outcome of the primary. The *Union Leader* still dominates the politics of Manchester, by far the state's largest city, so Reagan should gain a big plurality there. The paper does what it can to blunt the Ford campaign's attempt to hurt Reagan by stressing his so-called $90-billion shift of the tax burden from the federal to the state level. New Hampshire voters are notorious for their hostility to state levies, and Loeb is the leader of statewide opposition to any broad-based tax. So, when he says that the Reagan proposal is consistent with his own philosophy and would not raise state taxes, that should substantially reduce the value of Ford's main issue.

Reagan should win in New Hampshire or come close enough to give the President a real scare. He will also pick up some delegates in Massachusetts. The Ford people say that the President will stay in the race, even if that happens. At the same time, they maintain that if they can defeat Reagan in conservative New Hampshire and perform well in Massachusetts, the former California Governor will be eliminated. That's a double standard that could turn out to be nothing more than wishful thinking. The two primaries may prove fatal to the hopes of one or the other candidate.

Among the Democrats, Carter has the most to gain and the least to lose. He will certainly survive to face Wallace in Florida on March 9. Perceived as the most conservative of the liberal candidates, he stands to gain a plurality in New Hampshire. (Ask his campaign managers there what his goal is and they leap from their seats, literally yelling: "To win!") As the earliest entrant in Maine, he expects to run second only to the "uncommitted." In Vermont, he is the favorite. On the basis of his high hopes elsewhere, he is expanding his effort in Massachusetts. Some liberals there say they don't like him because he is too pragmatic on the issues and too ambitious ("like Nixon"), but his nondoc-

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trinaire stance and his drive have an undeniable appeal.

For Udall, who faltered in Iowa, New Hampshire is make-or-break. He has the cream of the McGovern organization, but has trouble getting his torch to light. Even his physiognomy suggests another Ed Muskie, the very model of a centrist. He will spend the full amount allowed, about $220,000, a total that will be equaled only by Reagan and Ford.

The Shriver people admit that their man must do well in Massachusetts or forget the campaign. He appears to be struggling with Wallace for the lead there and will base his campaign entirely on his ties to the Kennedy family (which hurts him with Loeb) and his Catholic faith. Shriver, who opposes a constitutional amendment banning abortion, will have to give up some votes to Ellen McCormack, the Long Island housewife running as the "right-to-life" candidate, whose national fund-raising drive has succeeded to the point or allowing her to buy time for television and radio spots.

Bayh, too, could be eliminated by a poor showing. His campaign staff worries that he will run out of money unless he can show that he can win votes. Harris, despite his core of dedicated supporters, is not broadening his appeal. One New Hampshire voter says he loves to listen to Harris, but it's like eating a Chinese dinner—somehow you feel empty a little while later. If the dedicated liberals of New Hampshire and Massachusetts don't give him a boost, he may be forced to retire. Jackson, who wants Massachusetts people to vote for him because he's against bussing but not a racist, has made little progress. Too many people, remembering that a few months ago he told them he was really a liberal, except for his unwillingness to cut military spending, rate him an opportunist. But his big bankroll should enable him to attract some support and he has wisely kept his campaign at a low key. Even if he flops, he will survive New England.

Massachusetts, the state that George McGovern carried, could easily hand George Wallace a primary victory. Wallace poor-mouths his chances, but a month before the vote he is considered by many to be in the lead. This does not indicate a sudden switch by Democratic liberals in the Bay State. McGovern won there as the candidate of the Democratic Party because it is one of the states most faithful to the Democrats. Wallace can come first in the primary on the basis of a strong anti-bussing vote in Boston, while the more progressive candidates split the rest of the vote five or six ways. But a Wallace victory will almost certainly serve to narrow the field rapidly as progressives realize they must unify to beat him. With Florida the next week, Carter is a likely beneficiary. So is Hubert Humphrey.

As the New Hampshire primary has given way to a more regional process of selection, some of the excitement and even the fun of that state's race seem to have disappeared. But the shift may mean a more authoritative expression of voter sentiment which can suddenly narrow the Democratic field and which might transform the Republican contest by encouraging Rockefeller to join the fray. □

PRESIDENTIAL BATTALIONS

THE POWER OF 'UNDECLARED' WAR

JAMES A. GOODMAN

Washington

Although Presidential wars have a long history, it is only since the rise of the CIA that the undeclared war has become an integral part of U.S. foreign policy. And, as is now the case with our meddling in Angola, a smoke screen of Presidential double-talk often blurs public knowledge of our involvement in a particular conflict. Thirty years of cold-war diplomacy have so programmed us to a foreign policy that thrives on cloak-and-dagger secrecy that we have almost come to rely on after-the-fact news leaks or Congressional hearings for information about key foreign policy decisions.

Moreover, recent disclosures about American involvement in Angola show how remiss Congress has been in deflating the Imperial Presidency; the Congressional cave-in that Sen. Thomas Eagleton documented in his history of the 1973 War Powers Resolution (*War and Presidential Power: A Chronicle of Congressional Surrender*) has indeed come back to haunt us. Far from putting a Congressional clamp on Presidential wars, the resolution actually encourages such ventures by allowing the President to dispatch American troops for up to ninety days without the slightest nod from Congress, and it also ducks the most important War Powers issue: the President's use of the CIA to conduct covert wars. Nowhere in the text of the resolution is the CIA so much as mentioned, and an Eagleton amendment to extend Congress's War Powers responsibilities to the activities of civilian advisers and combatants was defeated (53 to 34) in the Senate the July before the bill's enactment.

The effect of this omission can be seen in the following exchange between Otis Pike, chairman of the House Select Committee on Intelligence, and Mitchell Rogovin, special counsel to the CIA, during a discussion last December of U.S. intervention in Angola.

> *Chairman Pike*: Mr. Rogovin, you cite the War Powers Act in your testimony as imposing certain limitations on the Presidency. The War Powers Act involves the use of American armed forces. Would you deem the CIA to be part of the American armed forces?
>
> *Mr. Rogovin*: No, sir.
>
> *Chairman Pike*: So that in your view of the law there would be nothing to prevent the CIA from hiring individuals to fight a war without the approval required by the War Powers Act?

James Goodman is a free-lance writer whose articles have appeared in The Nation, Commonweal, The New Republic, The Milwaukee Journal *and* The Progressive.

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Mr. Rogovin: This is correct. That legislation would not inhibit [it]. . . . All the War Powers Resolution does is require the President to consult with Congress before introducing armed servicemen into hostilities.

Similarly, outgoing CIA Director William Colby stated that the administration's "modest" activities in Angola are permitted under the "War Powers Resolution" because "paramilitary operations" were not expressly outlawed by the resolution.

But aside from the CIA's current involvement in Angola, two other foreign policy situations that arose after the War Powers Resolution had become law underscore weaknesses in this legislation.

First, the Ford administration's threatened war over oil. In the Middle East, where peace should be our uncontested foreign policy priority, the administration raised the possibility of armed intervention on behalf of American oil interests, with Israel's survival and Palestinian rights taking a back seat. Rather than feeling bound by the War Powers Resolution at least to debate with Congress American interests in the Middle East, Vice President Rockefeller stated (*Face the Nation*, January 26, 1975) that Article 51 of the U.N. Charter ("the inherent right of individual or collective self-defense") justifies intervention if American oil interests are threatened, since "strangulation would be economic warfare, and therefore to avoid that, which is what comes from strangulation, any nation would have the right to take action" under Article 51. He can take that position because the War Powers Resolution has no provision for prior restraint.

Oliphant, The Washington Star

"Uh, Oh—Get Down! Here Come the Bleeding Hearts!"

Second, the Ford administration misused the War Powers Resolution during American disengagement from Indochina. In the *Minnesota Law Review* (November 1975) Michael J. Glennon, an assistant legislative counsel to the U.S. Senate, presents a cogent critique of the War Powers Resolution, especially with respect to the misapplication of those powers in Indochina. The President relied on the resolution four times (three times in actions relating to the evacuation of American and foreign nationals from South Vietnam and Cambodia, and once more for the administration's show of force in the *Mayagüez* "rescue"). And here again the War Powers' lack of prior restraint, says Glennon, made it impossible for "the resolution to control the President's use of armed forces" during these events. In his examination of the four Presidential reports filed in compliance with the resolution, Glennon finds that "the several statutory funding prohibitions" of the resolution "were violated." He concludes: "During the *Mayagüez* incident and the evacuations from Cambodia and South Vietnam, Congress acquiesced in statutorily prohibited and constitutionally dubious military actions ordered by the President."

Similarly, a House International Relations subcommittee's look into the use of War Powers in Indochina indicates, in the words of subcommittee Chairman Clement Zablocki, that "it is apparent, as reflected by the testimony of executive branch witnesses in these hearings, that the executive branch proclivity is toward evasive and selective interpretation of the War Powers Resolution."

But Congress, when it was hashing over the details of this War Powers test case, was so absorbed in determining whether it was to be "informed" or "consulted" that it overlooked a really fundamental problem which emerged with the *Mayagüez* affair: the lack of rigid War Powers criteria to prevent the Executive from misusing these special powers for purely political purposes.

To date, Congress has done little to distinguish itself in the area of War Powers, and it has done even less to control the President's use of the CIA to make war. In fact, Congress's first step in this latter category—the December 1974 amendment to the Foreign Assistance Act which outlaws the funding of CIA covert ventures "unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of Congress"—was so timid that it has proved to be inconsequential. Leslie Gelb, writing in *The New York Times Magazine* (December 21, 1975), points to the effect of this 1974 amendment: "The main contribution of the law was to enlarge Congressional knowledge of covert actions. Until that time, only the House and Senate Armed Services and Appropriations Committees were privy. These four committees had formed themselves into subcommittees with ties of friendship to the agency; even some of their members described their 'oversight' as perfunctory. To this cozy situation the amendment added the Senate Foreign Relations Committee and the House International Relations Committee."

While it is to the Senate's credit that it voted to cut off covert funding to Angola, the Senate Foreign Relations Committee has refused to consider seriously several Eagleton proposals, the most recent of them coming shortly before Christmas recess, to amend the War Powers Resolution so that CIA covert activities fall under Congress's War Powers responsibilities.

And ultimately Congress must go beyond plugging War Powers loopholes. In order to finish with the matter, the legislators must ask themselves if any covert action is consistent with democratic principles. The record is clearly to the contrary. □

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BOOKS & THE ARTS

The Unsettling of America (Part II)

WENDELL BERRY

This is Part II of an essay whose first section appeared in these pages last week.

The first principle of the exploitive mind is to divide and conquer. And there has surely never been a people more ominously and painfully divided than we are—both against one another and within ourselves. Once the revolution of exploitation is underway, statesmanship and craftsmanship are gradually replaced by salesmanship, until selling becomes almost flagrantly an art of deception, given an elaborate curriculum in the schools, and highly paid and respected. Its stock in trade in politics is to sell despotism and avarice as freedom and democracy. In business it sells sham and frustration as luxury and satisfaction. The "constantly expanding market" first opened in the New World by the fur traders is still expanding—no longer so much by expansions of territory or population, but by the calculated outdating, outmoding, and flimsification of goods, and by the hysterical self-dissatisfaction of consumers that is indigenous to an exploitive society.

This gluttonous enterprise of ugliness, waste and fraud thrives in the disastrous breach it has helped to make between our bodies and our souls. As a people, we have lost sight of the profound communion—even the union—of the so-called inner with the so-called outer life. Confucius said: "If a man have not order within him, he cannot spread order about him. . . ." Surrounded as we are by evidence of the disorders of our souls and our world, we feel the strong truth in those words and we feel the possibility of healing that is in them. We see the likelihood that our surroundings, from our clothes to our countryside are the products of our inward life—our spirit, our vision—as much as they are products of nature and work. If this is true, then we cannot live as we do and be as we would like to be. There is nothing more absurd, to give an example that is only apparently trivial, than the millions who wish to live in luxury and idleness and yet be slender and good-looking. And we have millions whose livelihoods, amusements and comforts are all destructive, who nevertheless wish to live in a healthy environment; they want to run their recreational engines in clean fresh air. There is now, in fact, no "benefit" that is not associated with disaster. That is because power can be disposed morally or harmlessly only by thoroughly unified characters and communities.

What is the cause of these divisions? There are no doubt many causes, complex both in themselves and in their interaction. But pertinent to them all, I think, is our attitude toward work. The growth of the exploiters' revolution on this continent has been accompanied by the growth of the idea that work is beneath human dignity, particularly any form of handwork. We have made it our overriding ambition to escape work, and as a consequence have debased work until it is only fit to escape from. We have debased the products of work, and have been, in turn, debased by them. Out of this contempt for work arose the idea of a nigger: at first some body, and later some thing that would relieve us of the burden of work. If we began by making niggers of people, we have ended by making a nigger of the world. We have taken the irreplaceable energies and materials of the world and turned them into gimcrack "labor-saving devices." We have made of the rivers and oceans and even the winds niggers to carry away our refuse that we think we are too good to dispose of decently ourselves. And in doing this to the world, that is our common heritage and bond, we have returned to making niggers of people: we have become one another's niggers.

But is work something that we have a right to escape? And can we escape it with impunity? We are probably the first entire people ever to think so. All the ancient wisdom that has come down to us counsels otherwise. It counsels us that work is necessary to us, as much a part of our condition as mortality; that good work is our salvation and our joy; that shoddy or dishonest or self-serving work is our curse and our doom. We have tried to escape the sweat and sorrow promised in Genesis—only to find that, in order to do so, we must forswear love and excellence, health and joy.

Thus we can see growing out of our history a condition that is physically dangerous, morally repugnant, ugly. Contrary to the blandishments of the salesmen, it is not particularly comfortable or happy. It is not even affluent in any meaningful sense, because its abundance is dependent on sources that are being rapidly exhausted by its methods. Only to see these things is to come up against the question: then what *is* desirable?

One possibility is just to tag along with the fantasists in government and industry, who would have us believe that we can pursue our ideals of affluence, comfort, mobility and leisure indefinitely. This curious faith is predicated on the notion that we will soon develop unlimited new sources of energy: domestic oil fields, shale oil, gasified coal, nuclear energy, solar energy and so on. This is fantastical because the basic cause of the energy crisis is not scarcity; it is moral ignorance and weakness of character. We don't know *how* to use energy, or what to use it *for*. And we cannot restrain ourselves. Our time is characterized as much by the abuse and waste of human energy as it is by the abuse and waste of fossil fuel energy. Nuclear power is presumably now going to be used benignly by the same mentality that has egregiously devalued and misapplied manpower. If we had an unlimited supply of solar or wind power, we would use that destructively too, for the same reasons.

Perhaps all of those sources of energy are going to be developed. Perhaps all of them can sooner or later be developed without threatening our survival. But not all of them together can guarantee our survival, and they cannot define what is desirable. We will not find those answers in Washington, D.C., or in the laboratories of oil companies. In order to find them, we will have to look closer to ourselves.

I believe that they are to be found in our history: in its until now subordinate tendency of settlement, of domestic permanence. It is to be found in the ambitions of

Wendell Berry is a poet and novelist who lives in Kentucky. His latest book is The Memory of Old Jack (*Harcourt Brace Jovanovich*).

THE PINK DONKEY

From the electric tip
to the guardian mouse at the bottom,
scattered hot colors
light the world and shadow the heart
of doubt.
A butterfly turns on a pinhead,
and a hooked glass fish
closes its one eye
on a bird.
The soldier's happy
in such company, bright as a button, armed,
and all the pink donkey must do,
among the branches, is wait
for one with a sombrero and guitar,
with no place in particular
to ride.

James Cole

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thousands of immigrants; it is formulated eloquently in some of the letters of Thomas Jefferson; it was the dream of liberated slaves; it was written into law in the Homestead Act of 1862. There are few of us whose families have not at some time been moved to see its vision and to attempt to enact its possibility. I am talking about the idea that as many as possible should share in the ownership of the land, and thus be bound to it by economic interest, by the investment of love and work, by family loyalty, by memory and tradition. How much land this should be is a question, and it varies with geography. The Homestead Act said 160 acres. The freedmen of the 1860s hoped for 40. We know that, particularly in other countries, families have lived decently on far fewer acres than that.

This old ideal is still full of promise. It is potent with healing and with health. It has the power to turn each person away from the big-time promising and planning of the government, to confront in himself, in the immediacy of his own circumstances and whereabouts, the question of what methods and ways are best. It proposes an economy of necessities, rather than an economy based upon anxiety, fantasy, luxury and idle wishing. It proposes the independent, free-standing citizenry that Jefferson thought to be the surest safeguard of democratic liberty. And perhaps most important of all, it proposes an agriculture based upon intensive work, local energies, care and intentional permanence—that is, to state the matter from a consumer's point of view, a dependable, long-term food supply.

This is a possibility that is obviously imperiled—by antipathy in high places, by adverse fashions and attitudes in the general public, by the deterioration of our present farm communities and traditions, by the flawed education and the inexperience of our young people. And yet it alone can promise us the continuity of attention and devotion without which the human life of the earth is impossible.

Sixty years ago, in another time of crisis, Thomas Hardy wrote these stanzas:

Only a man harrowing clods
In a slow silent walk
With an old horse that stumbles and nods
Half asleep as they stalk.

Only thin smoke without flame
From the heaps of couch-grass;
Yet this will go onward the same
Though Dynasties pass.

Today most of our people are so conditioned that they do not wish to harrow clods either with an old horse or with a new tractor. Yet Hardy's vision has come to be more urgently true than ever. The great difference these sixty years have made is that, though we feel that this work *must* go onward, we are not so certain that it will. But the care of the earth is our most ancient and most worthy and—after all—our most pleasing responsibility. To cherish what remains of it, and to foster its renewal, is our only legitimate hope. □

The Mythomane Unveiled

ANDRE MALRAUX. *By Jean Lacouture. Translated by Alan Sheridan. Pantheon. 510 pp. $12.95.*

GEORGE WOODCOCK

Despite his multi-leveled celebrity and his much paraded cult of fraternity, André Malraux has always seemed a solitary figure in the French literary world. Even when he was closest to the French Communist Party (which he never joined) he was uneasy in his relationship with committed party liners like Louis Aragon. The writers with whom one normally associates him by affinity, because of a common obsession with the absurd, are Camus and Sartre, but Malraux's attitude toward them can only be drawn in shades of enmity. He admired Gide for combining classicism of form with freedom of thought, but the relationship between the two writers was always uneasy, Gide shrinking before Malraux's conversational pyrotechnics. The writer to whom Malraux seems to have felt closest, the man he might have called *mon semblable, mon frère*, was the least likely of all, Drieu de la Rochelle. Though one progressed steadily to the left and the other to the right, Malraux and Drieu de la Rochelle shared a cult of heroism which they had acquired from Nietzsche. Despite Drieu de la Rochelle's surrender to the temptations of fascism and his wartime collaboration with the Nazis, Malraux never cut him off from friendship, and when the lonely and execrated Drieu committed suicide in 1945, Malraux not only attended his funeral (an act of some courage at that time of anti-collaborationist hysteria) but served with exemplary conscientiousness as his dead friend's literary executor.

When one remembers that this record of personal loyalty, unmarred by partisanship, belongs to the man who refused to raise his voice over the Moscow trials, who remained silent over the persecution of Victor Serge and the murder of Andrés Nin for fear support might be drawn away from the Communists at the time of the Spanish Civil War, it is clear that we are faced with a personality of unusual deviousness and complexity, and it is for the best illumination of that personality so far offered that we must acknowledge Jean Lacouture's *André Malraux*. There have been good literary studies of Malraux—notably Gaëtan Picon's *André Malraux* (1945) and W.M. Frohock's *André Malraux and the Tragic Imagination* (1952), but up to now we have had neither a full biography nor a biography which has sifted the evidence as carefully as Lacouture's—or has so plausibly reconstructed the likely course of Malraux's life behind the curtain of legend created by a mixture of lies and silences, and complicated rather than clarified by a mythomaniac pseudo-autobiography, *Antimémoires*.

In the case of Malraux it is difficult for even the most dedicated of pure critics to avoid the biographical dimension, so deeply interconnected are the real man of action, the mythical persona, and the writer who—working best in the tensions of physical activity—produced the novels of heroism and, in the orotund rhetoric of *Les Voix du silence* and *La Métamorphose des dieux*, transfigured the artist. The two concepts of hero as artist (his life the masterpiece) and artist as hero (his masterpiece the victory) are indissolubly linked in Malraux, shaping his life at the same time as his writings, and bringing the two together in a kind of turmoil like the meeting of two rivers, a turmoil above which the haze of myth has always hung.

What did Malraux actually do between 1923 and 1927? Was he really in the thick of Chinese affairs during the crucial years when Mao's party was forged in adversity? When did he first meet Chou and Mao? Was he Borodin's lieutenant? Did he really discover in Arabia the lost capital of the Queen of Sheba? What were his exact relations with Trotsky? What did he do as a partisan commander in World War II? Was he ever a true Communist? Why did he desert the Communists to follow de Gaulle? And what—more than a common obsession with glory—drew together those two startlingly dissimilar men?

All these are questions which have never been successfully answered, largely because Malraux does not appear to have wanted them to be answered. Perhaps the crucial one is that relating to Malraux's supposed activities in China

George Woodcock's latest book is Who Killed the British Empire? *(Quadrangle/The New York Times Book Co.).*

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and to the widespread belief that he played a role in the Canton events described in *Les Conquérants* (1928) and the Shanghai events described in *La Condition humaine* (1933). So seriously was the myth of his intervention in the Chinese Revolution taken that Trotsky in 1937 asserted in good faith: "In 1926 Malraux was in China in the service of the Comintern-Kuomintang, and he is one of those who bear responsibility for the crushing of the Chinese Revolution." Malraux had long admired Trotsky; in 1929 he planned to rescue the Old Man from Alma Ata to which Stalin had exiled him, and in 1934 on a visit to Russia he courageously proposed at one of Gorky's literary parties a toast to the "great absentee, Lev Davidovich Trotsky." Yet when Trotsky attacked him in 1937 he made no attempt to deny the statement about his activities in China. Many years later a man even more closely associated with him than Trotsky—Georges Pompidou—asserted that the novelist had been in Asia for four years, from 1923-27, and had "fought at the side first of Chiang Kai-shek, then of the Communists." Even more recently, compiling the bibliography for his *Malraux: A Collection of Critical Essays* (1964), Prof. R.W.B. Lewis, a Yale authority on contemporary European fiction, suggested that Malraux had "probably not" been in Canton at the time of the events described in *Les Conquérants* but had "probably" been in Shanghai near the time of the events described in *La Condition humaine*, and for the years 1925-27 gave this notation: "To Indochina again, then to China. Works with the Jeune-Annam movement, then becomes agent of the Kuomintang (Nationalist People's Party of China) in charge of propaganda and information, eventually in Canton."

Jean Lacouture, whose biographies include an excellent one on Ho Chi Minh and who is one of the best French journalists in the field of Asian affairs (it was on his return in 1947 from a long period in Indochina that he first met Malraux), has been admirably equipped to disentangle these shadowy reaches of Malraux's life. What he demonstrates by a study of the known facts is that Malraux made a first trip to Indochina in 1923 as an adventurer in search of archaeological plunder. After the journey into the Cambodian forests which gave him much material for his second novel, *La Voie royale*, Malraux was arrested, tried and condemned to a long period of imprisonment which he never actually served. He returned to Paris at the end of 1924, and early in 1925 went back to Indochina where he became peripherally involved in the anti-colonialist movement among the Annamese. He had not ceased to be an adventurer—and has probably not ceased even now to be one—but he added a dedication to the cause of fraternity, which he has ever since pursued in such varied disguises as Stalinoid communism and Gaullism. Malraux went to Hong Kong for four days in 1925 to get type for the paper, *L'Indochine*, which he and Paul Monin had founded to support the anti-colonialist cause. He and Monin also established the party called Jeune Annam, of which Lacouture remarks that it "left precisely no mark on the country: no literature, no hostile press coverage, no accounts of any meetings—and the police took little notice of it."

Slight as was the effect of *L'Indochine* or Jeune Annam on events in Indochina, Malraux's experiences with the short-lived journal and the people he encountered in the obscure party were to be invaluable. They brought him in touch with Chinese who were themselves in touch with the Kuomintang, and with local revolutionaries of varying attitudes. And, though it is evident that Malraux left Asia in January 1926, not to return for almost forty years, and never got nearer to Canton or Shanghai than Hong Kong and Macao briefly visited, his experiences in Indochina, transferred to the Chinese situation, gave him sufficient material to present what appeared —to European outsiders at least—to be very plausible representations of China in revolution. It is a view not shared by the Chinese, who have no record of an André Malraux among their liberators and who have always tended to resent the focus in *La Condition humaine* on European hero adventurers.

As Lacouture shows, both *La Voie royale* and Malraux's remaining important novel, *L'Espoir* (1937) are much closer to the factual background of their author's life, the latter, with its vivid evocations of war-torn Spain, being as near to actual reportage as fiction can touch. And the fact that two of the four novels are very largely autobiographical has tended to induce the assumption that all of them are, and hence to sustain the Asian myth of Malraux.

All this occupies no more than a third of a biography that is thorough not only in tracing the actual details of Malraux's life but in speculating judiciously where that is justified; it is also concise and sensible in its literary criticism when that becomes necessary. The mythical version of Malraux's life has always been fascinating, even more for its questions than its answers. Now we have the answers, to the Asian questions and to others, and in defining Malraux they do not in any way diminish him. His career, with its multiple adventures and equally multiple transformations (from art thief to agitator to explorer to author to Communist apologist to irregular airman to partisan leader to Gaullist politician to aesthetician) remains astonishing as one reads this account of the rise of an insecure and ill-educated petit bourgeois boy, ashamed of his family, to worldwide fame as an author and national acceptance as a minister of the Grand Charles.

Nor is Malraux's stature as a novelist and an art historian lessened by the knowledge that he lied about his past or at best was not officious in telling the truth. Indeed, one can read his books with renewed interest, knowing how this fundamentally uninventive writer used and reshaped the material of his life into impressive fiction. And one can ponder on the special temptations to create new personae for them-

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selves that writers who are also men of action seem to experience. Orwell did it by giving his literary persona a separate name, and then living into that name and abandoning his own. Malraux, operating somewhat differently, created a pseudo-Malraux to mask the true Malraux, as private a being as the invented self was public. How far he came to believe in the invented self and to approximate in his own mind to that heroic image it is still impossible to tell, for even Jean Lacouture has not uncovered Malraux's inner mind; and, if the deliberate deceptions of the *Antimémoires* are to be taken as a caution, that ultimate core of personality is likely to be forever unrevealed. But Lacouture does at the end give us as good a brisk definition of the Malraux-of-all-the-masks as we are likely to get. After pointing out how little a Marxist Malraux ever was, he gives the clue to all the transformations by remarking: "But he must be seen above all as a Nietzschean, a Nietzschean haunted by Dostoevsky and the problem of evil." □

Billy Budd's Stutter

MELVILLE. *By Edwin Haviland Miller. George Braziller. 382 pp. $15.*

ROBERT K. MARTIN

The subject of this biography is not Herman Melville; it is rather the child hero of Freud's "family romance."

Edwin Miller shares with Freud the notion of the family pattern: on the one hand, the child is destined to re-enact the primal drama—hence his fate is racially determined; on the other hand, the success with which the child "resolves" the dilemma depends upon the history and nature of his particular family—hence he is personally determined. Yet Freud saw one way out of this deterministic trap, salvation through marriage, the replacement of the beloved mother by a mother-substitute, which would enable the male child to "become" the hated father.

Freud himself seems to have had doubts about the idyllic quality of monogamous marriage, and even about the necessity of the heterosexual solution, but in the hands of his followers, theory has become doctrine. The worst of Freud's followers—worst in the degree of vulgarization and worst in the extent of cultural damage—is probably Erik Erikson, who has imposed on Freud's notion of childhood development a gridwork of "stages" to insure that any deviation from the straight line toward "heterosexual mutuality" is seen as aberration, that any "solution" other than the ideal heterosexual couple is the result of arrested development.

Miller's view of Melville's life is based upon this Eriksonian concept—the ugly word "arrestment," a favorite with Miller, is the club with which Melville can be hit for having failed to live up to his heterosexual obligations. Miller's thesis is clear: if only Herman Melville had grown up and accepted his roles as father and husband, he would have solved his psychological problems and been as happy as Professor Miller. Thus he writes in his preface, "In his lonely, troubled journey, Herman Melville repeatedly characterized himself as an Ishmael, a friendless orphan. I have been more fortunate: Rosalind has always been there." (I shall await with pleasure the Freudian biographer of Professor Miller, who will doubtless point out that he married Rosalind because her name evoked Shakespeare's play on sexual identity in *As You Like It*; obviously he is really Zeus wed to Ganymede.)

What if Melville did not *want* that kind of happiness? What if heterosexual monogamy would not in fact have made him happy? (Every indication is that Melville did try it, and didn't like it.) But that cannot be, in the simplistic world Miller draws for us—Melville must be like all other men, must be an Oedipus, and find a proper solution in the prescribed way.

It is here that Erikson is most dangerous, for implicit in his system is the idea of cure. Freud does not seem to

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BORN UNDER THE MESQUITE

I was always afraid of your deformity

you said it was high arches
the army classified you 4-F

I turned my head away
and watched heat shimmer above the field
inside me someone wondered what it meant
to be born under the buzzards' wheeling trance
carried by those sickle feet

something happened during birth you said
that's what the country doctor said

I listened in my ear
someone was inventing the birthday story
under this gray farmhouse shell
clanking in this bed
your feet too long curled hung on
wouldn't let you go
it took
a tornado to suck you into the world

and the awful pressure on your tender head and bones
left you with a convex spinal curve kyphosis
that's what the dictionary calls it humpbacked
when the moon is gibbous more than half and less than full
it was under that moon
under the mesquite you were born
gnarled and scaly from drought and heat

someone inside me wouldn't rest who said
you are this land this territory birthmarked
by buzzards' feet the humpbacked moon that damned mesquite

someone unformed inside was afraid
and asked what mark will this land leave on me?

Jeanne Hill

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have believed, particularly in his mature years, that the cure of every neurosis was necessarily a good thing. For one thing, he was always aware of the positive function of neurosis in the creation of art. But Erikson, and Miller by strong implication, would destroy art on the way to curing neurosis—without even weighing the cultural implications, and having prejudged the personal ones.

Miller's presentation reflects his theoretical bias. He begins his "inner narrative" with the famous encounter of Melville and Hawthorne, which he sees as a meeting of the "son" with the "father." Hawthorne's alleged rejection of Melville thus becomes a strand in the fabric of the Oedipal argument: Hawthorne's attitude re-enacts Allan Melville's hostility to his son and confirms Herman in his lovelessness. Herman Melville then re-enacts that drama in his creative works, by identifying himself with a series of childlike heroes who are rejected by their respective fathers. Not even *Moby Dick* escapes this reductive analysis: in Miller's reading Melville's greatest novel is "a study of the rivalry of the 'son' (Ishmael) with the 'father' (Ahab)."

The insistence on one ubiquitous pattern permeates and ultimately destroys this book. It is strewn with generalizations that reflect the imposition of a theoretical framework so heavy that both Melville's life and his art are crushed under the burden: "Compulsively and endlessly the son quested for paternal companionship and guidance, for the ideal father no son ever finds." The predetermined Oedipal pattern, with its additions from Eriksonian positivism and normativeness, is responsible for the tone of the biography, with its mixture of psychoanalytic jargon and careless categorization: "The Apollo fantasy is an adolescent dream or homoerotic arrestment." Ishmael's participation in "sperm-squeezing" is one of "the experiences conforming to adolescent homosexual attractions prior to heterosexual engagements." "The latent Oedipal conflict is now made explicit." Pierre's nihilism "is an infantile whine for sympathy."

Not very well hidden in these phrases is the assumption that all homosexual activity, or even fantasy, is appropriate only to adolescence; it's apparently all right for boy scouts, but a sign of arrestment among men. What is worse is that these formulas prevent Miller from seeing the works themselves. The work of art may well have its origins in neurosis, Oedipal conflict, or whatever, but surely those things do not make it valuable or interesting. Melville's intelligence, his extraordinary verbal inventiveness, his powerful imagination—all are lost. Each of his novels and stories drearily resembles all the others, as all are examples of a compulsive pattern. The subject matter, for Miller, is always "the handsome young man's search for a father-brother."

Many painful misreadings result. Perhaps the most offensive occur in the discussion of "Bartleby the Scrivener"; when Melville's brother Gansevoort dies of a brain tumor, we are told that Herman "could not have blocked out the fact that his brother, like the Bartleby he was to create less than a decade later, preferred not to live." One can accept the idea of psychosomatic illness in general and still doubt the theory of self-induced brain tumor in this instance. Miller pursues the argument further: Bartleby "employs the tactics of a victim of anorexia nervosa. To punish the lawyer, the nurturing parent, he refuses to eat." Miller's reductive approach takes away all dignity from the works he discusses, and turns them into case histories. Melville's *oeuvre* becomes a companion piece to Krafft-Ebing.

Even in instances in which psychic patterns are an important constituent of the work, although by no means a full statement of its meaning, Miller's system leads him astray. *Billy Budd,* for instance, may be read on a psychological level as a study of the effects of repression. Thus Claggart may be seen as Melville's portrayal of the disastrous result of the repression of homosexuality.

But Miller does not wish to consider this point at any length. It is irrelevant to his Oedipal theme and it could point the way to another biographical approach to Melville, through the study of repression. We need not assume that Melville identified himself only with Vere, as Miller suggests, but may consider that Melville's own experience of repression led to his portrayal of that former part of himself, the self-repressed, in the figure of Claggart.

It is quite likely that Melville repressed his own homosexual feelings during a large part of his life—or at least confined them to the periods of his long journeys. But the encounter with Hawthorne seems, particularly if we take the theme of *Clarel* and its re-creation of the yearned-for seduction of Hawthorne/Vine by Melville/Clarel, to have brought Melville to a realization of the nature of his own sexuality and a greater sexual frankness in his writing. Melville was then in a position to look back on an earlier period when he, like Claggart, might have turned frustrated love into hatred.

Such an approach to Melville's biography was already indicated twenty-five years ago by Newton Arvin, although Arvin did not choose to work out a detailed study in those terms. But Miller is steadfastly opposed to any such view, which would make Melville not a maladjusted, regressive figure of failure but rather a victim of a repressive society that would offer no possibility for the expression of homosexuality except in "adolescent fantasies."

Since the publication of Leslie Fiedler's *Love and Death in the American Novel,* it has often been assumed in the criticism of American literature that American writers habitually "evade" their heterosexual responsibilities and flee into childlike homosexual fantasy. (Fiedler himself now disavows this part of his book.) But no one seems to have suggested that adolescent themes are used as the only safe way for a homosexual writer to deal with an otherwise taboo topic. It is repression that creates the scoutmaster mentality, not homosexuality.

Miller assiduously avoids investigating any aspect of homosexuality other than the "regressive." He calls attention to Melville's references to the Knights

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Templars, but says of their successors in "The Paradise of Bachelors," "Childmen, they have regressed to oral delights and autoeroticism." It is likely that Melville expected some of his readers to read correctly the reference to the Knights Templars and to see that the tale is in fact an evocation of an atmosphere of homosexual revelry. That the modern knights are desexualized is the fault of Victorian propriety, in which all sexuality goes into the closet.

The physical deformity of many of Melville's heroes (Celio's humpback, Billy's stutter, Tommo's swollen leg) is noticed by Miller, but never commented on in the context of the tradition in keeping with which the homosexual writer employs deformity, particularly in association with physical beauty, as a code reference to the hero's social deformity, his homosexuality. The deformity is not a psychic illness but a social stigma. (Cf., Rickie in E. M. Forster's *The Longest Journey* or Philip in Somerset Maugham's *Of Human Bondage*.)

Miller's failure to deal adequately with Melville's homosexuality is akin to his failure to deal at all with the philosophical, literary or intellectual content of the novels and stories. Both derive from the assumption of an analytical method and the willingness to subordinate all else to that method. Nevertheless, his book is useful for the material it brings together, particularly for the light it sheds on the Hawthorne-Melville relationship (Miller is one of the first to propose in print that Melville was in love with Hawthorne and expressed this love through the physical imagery of impregnation.) But it inevitably makes Hawthorne the heterosexual hero and Melville the homosexual villain. It is time to consider telling the story the other way. Is it not possible that Melville's overt homosexuality offended Hawthorne, not because Hawthorne was so heterosexual but because Hawthorne himself feared the feminine within, his own homosexuality? Miller cannot even entertain such questions, and so his biography fails as a study of Melville's mind as well as of his art. □

The Procedural Sheet Anchor

THE MORALITY OF CONSENT. *By Alexander Bickel. Yale University Press. 156 pp. $10.*

STUART A. SCHEINGOLD

This is not an easy book to review. It is, after all, the final work, posthumously published, of one of the great figures of contemporary American law. Yet this small volume can in no sense be seen as the culminating event of Alexander Bickel's distinguished career. It is rewarding reading, and reflects Bickel's abiding fascination with the political and moral force of law, but it is not a summing up. Rather, it adds suggestively if inconclusively to the impressive intellectual record left by this fine scholar.

I deeply admire Professor Bickel's work, but I do not share the conservative premises on which it ultimately rests. However, I have chosen not to devote this review to questioning those premises. It would be unfair, I think, to use this particular book as the occasion for an appraisal better left to a longer essay that takes into account all of his work. Besides, regardless of his premises, one cannot fail to profit from the intellectual force of his argumentation. Consequently, I shall concentrate on conveying the spirit of Bickel's inquiry in what I hope is a discriminating but sympathetic fashion.

Above all, this is not a book for the true believer. The Burkian skepticism which has always permeated Bickel's work becomes in this final offering the dominant note. As he moves from problem to problem, we find that every silver lining has its cloud, every moral principle its compelling competitor. Even where moral claims are indisputable, Bickel contends that to turn politics solely to the satisfaction of moral ends is destructive and self-defeating. "We cannot," he warns, "survive a politics of moral attack."

The book can best be seen as an application of this admonition to a diverse collection of current issues. The first chapter on constitutionalism sets the scene and is followed by essays on citizenship, freedom of the press, civil disobedience and intellectual responsibility. Each essay poses what is for Bickel the inevitable dilemma of political ordering: all great principles carry the seeds of their own destruction. The government and the press are engaged in a struggle in which absolute freedom of the press may well be as inimical to a free society as governmental restraint. Civil disobedience and conscientious objection have a place in democratic politics, but, "like law itself, civil disobedience is habit forming, and the habit it forms is destructive of the legal order." Even judicial defense of constitutionalism is for Bickel, as it was for Frankfurter, dangerous. Constitutionalism ultimately depends on the vitality of democratic institutions, and that vitality will inevitably be undermined by habitual dependence on the judges.

What, then, is the role of law in a setting in which solutions to our gravest problems of public policy are to remain forever out of reach? Bickel's response is predicated on the familiar distinction between procedure and substance. As he sees it, there are two American constitutions—"the constitution of the open texture" having to do with great substantive policy principles, and "the manifest constitution" which is "the constitution of structure and process." For him, the manifest constitution is our rock. "It seems to me to make everything else possible." Justice may be "imperfect" in a procedurally correct setting, but where "the politics of ideal promises and inevitable betrayals" prevails, "justice is not merely imperfect . . . but soon becomes injustice."

Bickel's well-known condemnation of the Warren Court follows from the procedural priority. "The assault upon the legal order by moral imperatives was not only or perhaps even most effectively an assault from the outside . . . it came as well from within, in the Supreme Court headed for fifteen years by Earl Warren. . . . The Warren Court took the greatest pride in cutting through the legal technicalities, in piercing through to substance."

The main task of the law is, therefore, procedural. On matters of substance, the Court's responsibility is primarily to elevate the debate by illuminating the competing claims. In so doing, the Court can contribute to law's most important function: maintaining political civility and democratic procedures. And true to his own counsel, Bickel made of this book just such an exercise. Its rewards are to be found in the dialectic tensions generated by the political, moral and legal puzzles probed in that distinctively Bickelian fashion. Not even the procedural imperative itself escapes unscathed. "We do need, individually and as a society, some values, some belief in the foundations of our conduct, in order to make life bearable. If these too are lies, they are, as . . . Joseph Conrad thought them, true lies; if illusions, then indispensable ones. To abandon them is to commit moral suicide."

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While Bickel writes primarily about the law, it is clear that ultimately he is speaking about the burdens of leadership in a democratic republic. It is, therefore, fitting that the book concludes with his melancholy reflections on the turmoils of university life during the past decade. Predictably, he condemns those academics who yielded to the moral claims pressed upon them by "a sizable number of young" and so failed in their duty to maintain the university's commitment to "freedom of inquiry . . . [and] to the method of reason, however fallible."

"On April 23, 1970," Bickel reports, "the faculty of Yale College met, and having heard the president of the university express his skepticism that black revolutionaries could get a fair trial anywhere in the United States, voted to countenance a student strike protesting the trial of Bobby Seale and several other Black Panthers on a charge of murder." By that vote, Bickel claims, the faculty turned its back on the truth and thus evaded its responsibility to declare its faith in the criminal court system. "The young are right . . . about a great deal of racism and about the debasement of values by commercialism. But many are wrong about repression. The society is free and open, if flawed and gravely troubled."

The striking, the poignant, and ultimately the most important aspect of the incident at Yale is not the conclusion Bickel comes to nor even the arguments he offers—all consistent with his own brand of enlightened conservatism. What is remarkable is his vote *in favor of the strike* and his reflections on that vote. "I was at the meeting and so voted, and did not really feel ashamed until I walked out through the crowd of students who we had known were out there, whom we had heard, and who now cheered us." Why did he so vote? Why was he ashamed only after experiencing the approval of the students? We can only assume that he is confessing his own weakness—that in his eyes he and his colleagues had yielded to the temptation to curry favor with students or simply to experience the transitory pleasures of expressing moral outrage.

I cannot accept such conclusions. Looking back on that time, I too wonder whether intellectual leadership on the campuses might not have been exercised more responsibly. It is, however, less clear to me just where our duty lay. If the dilemma of means and ends is as profound as Bickel claims—and I believe that it is—then the easy answer provided by the procedural imperative is no more right than is easy recourse to moral outrage.

When the moral claims and political stakes are as compelling as they were during that era, can we cling to procedural imperatives even when the procedures fail to confront (let alone resolve) the essential problems of a troubled polity? Obviously, I cannot know what led Alexander Bickel to cast what he quickly concluded was a shameful vote. I am inclined, however, to take it as a mark of his own humanity and as testimony to the painful choices posed in this last book. □

Music as a Tactful Auxiliary

KNOWING THE SCORE: Notes on Film Music. *By Irwin Bazelon. Van Nostrand Reinhold Company. 352 pp. $12.50.*

FRANK LEVY

Background music has become more and more an ever-present phenomenon in our society. In supermarkets, in restaurants, in the lobbies of office buildings and residences, we are engulfed by waves of sound whose sole purpose seems to be to fill the void, to alleviate the threat of silence. In motion pictures background music has a more positive function. It helps to crystallize the essence of the visual and spoken drama, thus enhancing the impact of the medium. The craft of film scoring has attracted hosts of competent and incompetent craftsmen. The plums of the industry, moreover, seem as often as not to fall into the hands of questionable practitioners.

The issue of the role of the so-called "serious" contemporary composer in this field, along with related matters, is treated with much knowledge and insight by Irwin Bazelon in this book. It is divided into two parts. The first is an essay on the fundamentals of film music, its functions and its limitations, with many examples of its practical applications. The second consists of fifteen interviews with well-known film composers, to whom he put the same basic set of questions.

Mr. Bazelon has several axes to grind in this book, the most persistent being the issue of the contemporary concert composer's neglect by filmmakers. Unfortunately, his case is somewhat weakened by frequent references to his own music, and by some unmistakable overtones of sour grapes. And yet, one cannot disagree with one of Bazelon's central themes—that it is not necessary to be a composer in the strict sense to write background music for film. That is certainly borne out by the rock scores produced by individuals or groups with little or no background or practical experience in composition.

Frank Levy is a composer and cellist who has worked in films for many years.

Although Bazelon does allude to the basic difference between concert music and background music, he does not go into sufficient detail about the question. The issue here is that the use of music as background for film negates its form as "pure music." Form in music involves a very delicate and easily disturbed balance between the elements of rhythm, melody and harmony. Its realization is entirely dependent on the ear and the memory of the listener, and can be easily overshadowed and destroyed by competing and more dominant acoustic media. And in competition with the visual and dramatic components of film, music is relegated to a very secondary role—amounting at times to parasitism. The more successful the musical struc-

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ture in its own terms, the more it tends to fight the film. Many contemporary musical styles are of an amorphous character, although on paper they may seem to have a rigorous structure. This kind of music actually gains in substance by association with film, and it is in the area of disembodied sounds and tonally ambivalent music that many of the still untapped resources for film scoring exist. It is here also that some of our contemporary film composers have produced their finest work. Bazelon implies as much in his musical examples of, among others, the work of Lalo Schifrin, John Williams, Jerry Goldsmith and Leonard Rosenman.

Most typical film scores also include generous helpings of such musical devices as reiterated melodic and rhythmic patterns, melodic "spaghetti," and harmonic patchwork quilts. These scores are written deliberately so that they can be cut and rearranged at will, making it easier for the music editor—who is not always a musician and rarely a composer—to "lay in" the music track. This kind of film scoring can also be found among Bazelon's many examples.

The function of music in the film context is well described in the following passage from Chapter V:

> As an art form and because of its affective power to stimulate response, music makes an ideal partner in the successful merger with the screen image. Whereas in pure music the listener dreams up his mental pictures, in film music he has the visual supplied to him and no longer has to imagine anything. The suggestive quality of music is intensified when a cinematic perspective is added to the musical form. . . .

In his chapter, "The Contemporary Concert Composer in Films," Bazelon does not discuss the basic difference between concert music and background music. Again it is a question of musical form. The concert composer writes music which should be shaped in accordance with purely musical principles. All the musical details serve to enhance the overall form. In background music, however—whether ballet, film or Musak—these formal musical elements are subjugated to the demands of the medium that they serve. Being the most abstract of the arts, music is also the most easily dominated, losing its structure easily in combination with other media. Because of this a composer used to dealing with purely musical structure must be prepared to take a completely different tack when writing for film. Not many composers, moreover, are willing to do this.

Bazelon is at his best in describing the techniques of various film composers and the interrelation of their music with the films for which they were written. His many examples of film scoring are interesting and enlightening.

The composers interviewed in the second section are: Alma Bernstein, Leonard Rosenman, Jerry Goldsmith, John Williams, Richard Rodney Bennett, Alex North, Lalo Schifrin, Bernard Herrmann, David Raskin, Bernardo Segall, Laurence Rosenthal, Johnny Mandel, Paul Glass, John Barry and Gail Kubik. The opening question in most of these interviews is: "In the context of defining a composer as a person who knows how to put a piece together, do you think it's necessary that one be a composer in the aesthetic sense to write film music, or can someone function in films without really qualifying as a composer?" In the various answers to this question, the ambiguous nature of its terms is evident. The word "composer" can of course be interpreted in many different ways. Anyone who creates reproduceable sounds by any means whatsoever could be considered a composer. It is obvious, however, that by "composer" Bazelon has something very specific in mind, namely someone trained to write very much as he himself has been. If in the first half of the book the issue of musical form had been dealt with more thoroughly, this question would have made more sense. What it then would have implied is: Does someone have to be able to write "concert music" in order to be able to write film music? Since most of the composers interviewed here are both educated and alert, their answers to the question reflect an implicit understanding of that dichotomy. There is, moreover, a difference between the ability to master the technical elements of putting notes together on paper and writing a piece that can stand on its own without the visual context of film. Only a few of the composers interviewed have written extensively outside of the film medium, and their achievements in one field do not necessarily correspond with their achievements in the other.

In any case, despite the objections I have raised, *Knowing the Score* provides an excellent introduction for the layman to the problems of film scoring. □

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THEATRE / Harold Clurman

Jules Feiffer's *Knock Knock* (Circle Repertory Theatre) is an improvisation on a number of themes, some of which imply the world's whacky incomprehensibility. The main motif is a debate between rationalism and philosophic idealism or fantasy, here engaged in by two oddballs. The rationalist is Cohn, a musician without "credits"; his antagonist, Abe, is a retired stockbroker who shares and probably pays for the seedy apartment they both occupy.

The initial argument leads to Cohn's challenging Abe to disappear magically since, as Abe maintains, everything is a matter of mind and personal perception. Whereupon Abe does disappear, to be replaced by a number of buffoons who appear *ad libitum* from nowhere and act as "judges" or counterforces. Then there is a knock on the apartment wall and St. Joan emerges from it in full regalia. She first enjoins Cohn to undertake a great cosmic adventure, but soon becomes domesticated as a maid-of-all-work or surrogate wife, in which role she proves thoroughly inept. In these later scenes Feiffer pokes fun at commonplace marital tiffs. Joan finally ascends to heaven with a final message entirely composed of a long string of contradictory and bromidic homilies which impart the notion that nothing we say about life makes any sense—we must resign ourselves to, or perhaps reap small pleasure from, the universal tohu-bohu.

There are several quite amusing passages and arch conceits in all this but, apart from its immediate entertainment value, the whole is of little consequence. One is hard put to judge the production: is it too down-to-earth ("realistic") or should it be more freely extravagant? Could it have been made more hilarious? The audience seems sufficiently pleased by it as it stands. Daniel Seltzer, a professor at Princeton,

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has genuine acting ability in a naturalistic vein; Neil Flanagan is crisp and dry as an unlikely Abe; Nancy Snyder is a pretty and courageous Joan, and Judd Hirsch because of his multiple part (all the wise-guy apparitions) is easily the funniest.

The Shortchanged Review by Michael Dorn Moody is the work of a sincere young playwright not yet in control of his intensity and material (Mitzi E. Newhouse Theatre: Lincoln Center). The sign of his youth is his eagerness to say all. The play is cluttered with passionate forays in several directions.

Central to the "story" is Nicky Shannigan, an idealistic gent whose altruism is the cause of more damage than benefit. He tries to run a subversively derisive radio station (WISH) without big-time sponsorship. He also wishes to help a friend—a deserter from the Army—who has also run afoul of the law by peddling drugs to maintain himself. He is a fond but negligent father of his teenage daughter. A heavy drinker, he is inadequate to his second wife; and from a benevolent motive he misappropriates funds his first wife left to his son, Darrell, an officer in the Marines recently recovered from wounds suffered in Vietnam.

The play is dramatically dominated by Darrell. The horror of war has so embittered him that he is inspired by nothing but hate for everyone and everything except his young half-sister who, though conventionally foul-mouthed, is a decent and likable girl. Darrell rapes his perhaps not altogether unwilling stepmother and kills the deserter because he evaded the trials of those who served.

The satirical broadcasts over Shannigan's radio station occasionally hit their mark, but much of the rest is hysterically and loquaciously vehement. The playwright is unable to "contain" his feelings of frustration and rage well enough to achieve clarity or coherence. The fault is enhanced by the fact that too many speeches are obscured by poor diction on the part of several members of the cast. But the company as a whole is well chosen and sympathetic.

At the La Mama Theatre, 74A East 4th Street, Bertolt Brecht's *The Good Woman of Setzuan* has been directed by the highly gifted Andrei Serban. Some years ago I saw another production of the play he did in Bucharest. It was the best of several I had seen previously and subsequently, and the present one, quite different in technique and quality, is also interesting and attractive.

The new version is based on Eric Bentley's translation. I say "based" because the play has been drastically cut, much of it is sung and the songs do not always correspond to those I read in the Bentley text: what we have now is an adaptation. Serban's intention in this instance is to create something very close to a children's fairy tale out of the Brechtian allegory. Its central proposition is "no one can be good for long when goodness is not in demand." The last words we remember, hand-printed on a placard, chorally recited and sung, are: "How can we be both rich and good?" —a Serban addition, I believe.

The actors move well on an open platform behind which is an admirably designed screen perforated for entrances and exits, and with cut-out squares through which individual heads may be singly seen. Above is a balcony: the entire set is made of handsomely planed wood of most pleasing effect. The music composed by Elizabeth Swados is theatrically helpful. The characterizations are sharply stylized, especially through vocal sound shaped as though it were composed of the various instruments of a chamber orchestra. Some of the verse strikes the ear as entertaining doggerel.

All this is charming, except that I could not make out much of what was being said when the special mode of speech and song were employed. When the dialogue was rendered naturally in the actor's normal manner everything was intelligible. This does not mean that Serban's style in this regard is mistaken. It simply indicates that months or years of further training are needed for its entirely successful dramatic use.

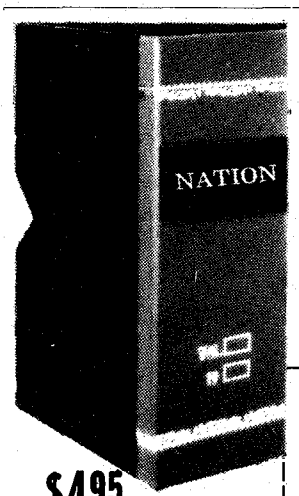
The one sure hit in this style is that of Priscilla Smith as the "good woman." The transition from winsome soprano to a warm or gruff contralto is nearly always smoothly accomplished, while her piquant personality and oddly appealing visage (as if tinged by a slight Orientalism) strike a responsive chord in the audience.

The Phoenix Theatre provides a good first program for its season at the Playhouse (359 West 48th Street). The plays are a double bill of Tennessee Williams's *27 Wagons Full of Cotton* and Arthur Miller's *A Memory of Two Mondays.*

The Williams play, written in 1946 (and later turned into the Kazan film *Baby Doll*), is a brief but sharply etched episode of need, greed, cunning and cruelty, stupidity, spite and sadism in a Southern town. Impoverished and ignorant farmers criminally compete for trade, and a woman, masochistically victimized, becomes a vehicle of sexual reprisal. This sketch, both laconic and evocative, reveals Williams in his incipient talent.

Miller's play, apparently revised since its first production in 1955 when it served as a curtain raiser to the author's *A View from the Bridge* (and was thus overlooked), recalls his boyhood experience as an employee in a warehouse. There he saw a varied group of ordinary men and women, most of whom were spending long years of their lives at dull, mechanical and clerical jobs, earning poor wages amid dust and dirt with little relief except through drink and bouts of prurience, till death did them entirely part.

There is very little strained pathos in the play or special pleading. The picture is neither one of debasement, nor is the author's posture anything other than compassionate, indeed affectionate. Every character is simply and truthfully drawn. The play struck me as being a little too long but I found myself held at almost every moment. It reflects a wider experience of



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daily observation than the limited scope of its environment might suggest. A melancholy melody is spun out of its very "banality."

Both plays are knowingly directed by Arvin Brown with an almost wholly satisfactory cast. Outstanding are Meryl Streep who in the Williams piece projects complexity within dumbness: low-grade sensuality, animal simplicity striving for articulate thought, a sneaky vindictiveness as a form of unconscious rebellion. Then there is Roy Poole, wretchedly crafty and obtuse in the same play and clumsily staunch in Miller's *Memory*. Leonardo Cimino is striking as a dryly preserved blue-collar remnant of long winters and summers of factory endurance.

The Phoenix Theatre is giving this bill alternately with Sidney Howard's *They Knew What They Wanted* which I saw on the first night of its original Theatre Guild production in 1924. I shall speak of the play in a forthcoming column. For the moment it pleases me to note that once again the momentary drought of worthy new American plays has necessitated the revival of old ones. The larder of American drama since 1920 is not as bare as we are accustomed to believe. □

ART

LAWRENCE ALLOWAY

Coincidentally, or perhaps competitively, there are exhibitions of American drawing at both the Museum of Modern Art and the Solomon R. Guggenheim Museum. "Drawing Now" at the Modern begins with Robert Rauschenberg's "Erased de Kooning" (1953), in which the younger artist's work consisted in effacing so far as he could a drawing of the older artist. (Every artist's dream of succession.) Incidentally, the drawing has been so well photographed for the catalogue that it reveals more of the "lost" original than you can usually see when standing in front of the present "original." It was one of de Kooning's women. This show, organized by Bernice Rose, concentrates on artists of the generation of Rauschenberg and after. At the Guggenheim Diane Waldman's "20th Century American Drawings: Three Avant-Garde Generations" covers a longer span.

Waldman presents a sequence of drawings from Joseph Stella, Georgia O'Keeffe and Charles Demuth (excellent), through the Abstract Expressionists (so-so), to Frank Stella, Ellsworth Kelly and Jasper Johns (excellent). Why does the museum qualify generations as "*avant-garde*?" It is because the previously inert nonmodernist body of 20th-century art has shown signs of arousal lately. "*Avant-garde*," like "modernist," signifies not innovation but a tradition that originated in the School of Paris and has been extended in the United States. A formal criterion of flatness and a referential level of some obliqueness are mandatory in this *avant-garde* succession. The only way for a representational drawing to get into Waldman's show is to be by a nonrealist: hence Arshile Gorky's "The Artist's Mother" and Willem de Kooning's "Elaine de Kooning."

It's the same at the Modern. Rose observes taste limits that bind her as firmly as they do Waldman to the *avant-garde status quo*. I am susceptible to the art they like: Rauschenberg's "Inferno" drawings with their minute delicacy and condensed references; Jasper Johns's sheets of patiently accreted marks that are both sign and touch; Agnes Martin's lightly drawn but obsessively phased grids; Sol LeWitt's geometrically based effects of haze. These are some of the pleasures of an aesthetic of great refinement, rather Whistlerian in its emphasis on tonal wholeness. A comparable economy of visual incident is found in the drawings of Bridget Riley, Dan Flavin, Donald Judd, Fred Sandback, Brice Marden, Robert Ryman and Mel Bochner, but they lack the subtle surface command of their immediate predecessors. As a result their drawings look thinned out, factual but attenuated. Rose takes this kind of lean drawing as canonical, however, and is blind to other styles.

Her choice is slanted rather than personal. Artists whose works represent solidly achieved positions that Rose ignores are Nancy Spero (collage), May Stevens (pencil drawings) and Marjorie Strider (volumetric objects in several media). Of course these works do not conform to the standard of linked flatness and indirection. Even within these limits however her selection reveals odd omissions. Where are Blythe Bohnen and Michelle Stuart, both of whom draw exclusively, or Rosemary Mayer? Why are they out and John Cage (a part-time artist), Hanne Darboven (a Conceptual artist who uses handwriting instead of typing), Jean Tinguely (an artist of the 1950s with no continuing presence) and Panamarenko (a grotesque) included? I suspect it is because they are part of an active international market, unlike Bohnen, Mayer and Stuart, and so are more familiar to Rose.

Such a suspicion is confirmed by the Guggenheim exhibition. Not only is each one of Waldheim's third-generation choices in Rose's show, they are all represented by one gallery, Leo Castelli's. Can we really believe that, however narrow a curator's taste might be, the only younger artists she likes are conveniently to be found under one roof? There has to be something wrong with her curiosity and energy if the artists of a single gallery can satisfy her requirements of high style. One of the responsibilities of a curator in the field of modern art is precisely to cut across dealer-originated categories and the star system. In the absence of curatorial independence, exhibitions like these become confirmations of the market rather than, as intended by their organizers, a declaration of aesthetic principle.

Given the assumption of both curators about flatness of image and ellipsis of reference, there is much to enjoy both uptown and midtown. For example, Kelly is discerningly selected at the Guggenheim and Johns at the Modern. However, the approach to representational art in both exhibitions is evasive. When clear depictions of objects occur in either show they are justified by other aspects of the artists' work than their mimetic transformations. For instance, Claes Oldenburg is represented by three drawings of 1967 at the Modern in which he demonstrates his facility at creating the appearance of three-dimensions on flat paper. His pneumatic volumes are eloquent, but why are there no drawings by artists who are engaged with this problem full time—i.e., realists? Charles Close is included, but his drawings of heads are mediated by their photographic origin (he paints from photos). Christo is included with flashy presentation drawings of projected earthworks. David Hockney is here, a campy artist whose early connection to English Pop art is certainly a part of the reason for his presence.

It is symptomatic that at the Modern Robert Smithson is represented by a drawing that is really a slate sculpture, whereas none of his numerous three-dimensionally modeled drawings, an essential part of his output, can be seen at either institution. The reason for this is the authority of the narrow criterion of art that has no place for illusionistic space or iconic representation. It should be noted that Andy Warhol appears as a draftsman in both exhibitions. His drawings have always seemed to me desultory; they touch the objects they depict like a limp handshake. In his silk-screened paintings, where he starts with a ready-made photographic image, he is brilliantly inventive, but when he initiates the form of the image himself it always turns out flabby. But he is a central part of the pantheon to which both curators subscribe so they can't risk leaving him out. The trouble is that both shows are based on a taste formed in the 1960s. They are nostalgic for a compact image of modernity which at the time seemed coherent and exhilarating, but which is now complacent and suspect. Too bad: Johns deserves a better context. □

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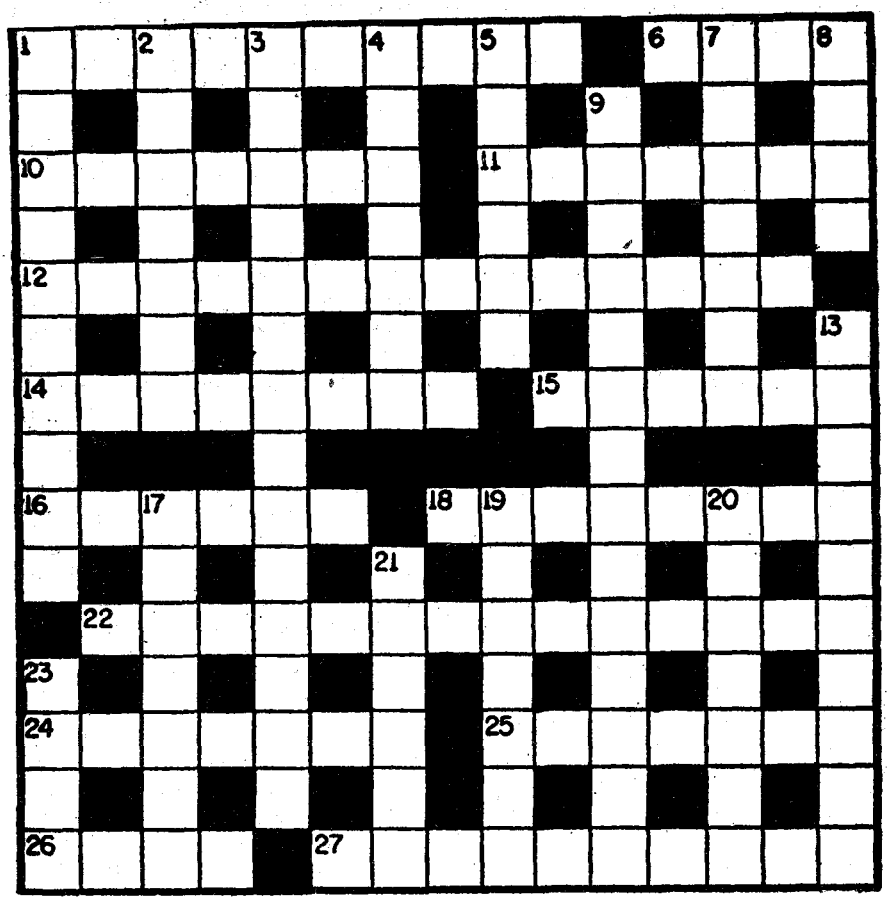
Crossword Puzzle No. 1619

FRANK W. LEWIS



ACROSS

1 Teller, rather than ordinary accountant. (10)
6 and 26 An unspecified person's comment on Mr. World? (8)
10 One familiarly said to be a dead player. (7)
11 It seems to be about noon, with some possible alterations. (7)
12 and 23 down The volume of its members changes periodically. (4-2-3-5,4)
14 You might find this dish dear, but the result would be persistent. (8)
15 What is left when one who comes out has the title backwards. (6)
16 One takes his hat off this way when one of the last of the tribe goes soft inside. (6)
18 One shouldn't miss this broadside. (4,4)
22 Implying the heart of fire we used to say the English lacked? (7,7)
24 Not an express hampering of movement if you are. (7)
25 Take something back about the document. (7)
26 See 6 across
27 When butchered, sells a deer without a head. (10)

DOWN

1 Road out? Rub the wrong way and this oldster could have given you the air. (10)
2 Reputedly company that could be on course. (7)
3 One with such would appreciate half fare at most. (4,2,8)
4 With 3, one might not be by food. (7)
5 Prepared to fire, with it being commonly drunk. (6)
7 His hair might be white or red, lost in the shuffle. (7)
8 When short of funds, they might have no meeting. (4)
9 Such pictures might try to extol the virtues of application. (6,3,5)
13 Old people got so short-changed! (10)
17 What people believe around the early hours should be smoothed out. (7)
19 Stuck with the problem of finding her dead? (7)
20 Perform an elemental operation on an animal at one time, possibly. (7)
21 The place of control, reputedly, might be either English or Western. (6)
23 See 12 across

SOLUTION TO PUZZLE NO. 1618

ACROSS: 1 Castaway; 5 Staves; 9 Archaic; 10 Coroner; 11 Studied; 12 Icicles; 13 Bag and baggage; 15 Water spaniels; 21 Toronto; 22 Imbiber; 23 Hostile; 24 Orating; 25 Dosage; 26 Asserted. DOWN: 1 Clause; 2 Succumb; 3 Abating; 4 Accident-prone; 6 Turning; 7 Vanilla; 8 Stressed; 10 Climbing irons; 14 Switched; 16 Thrusts; 17 Running; 18 Embrace; 19 Subsist; 20 Frigid.

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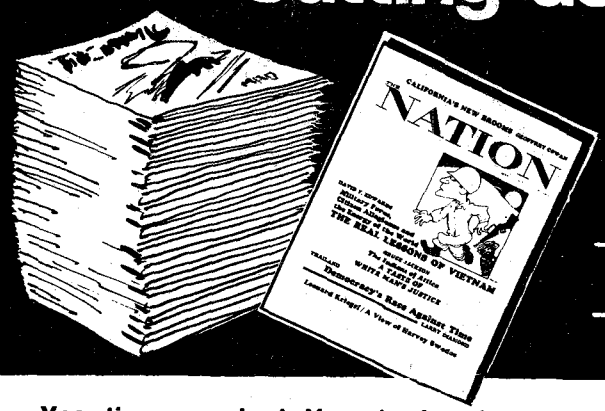

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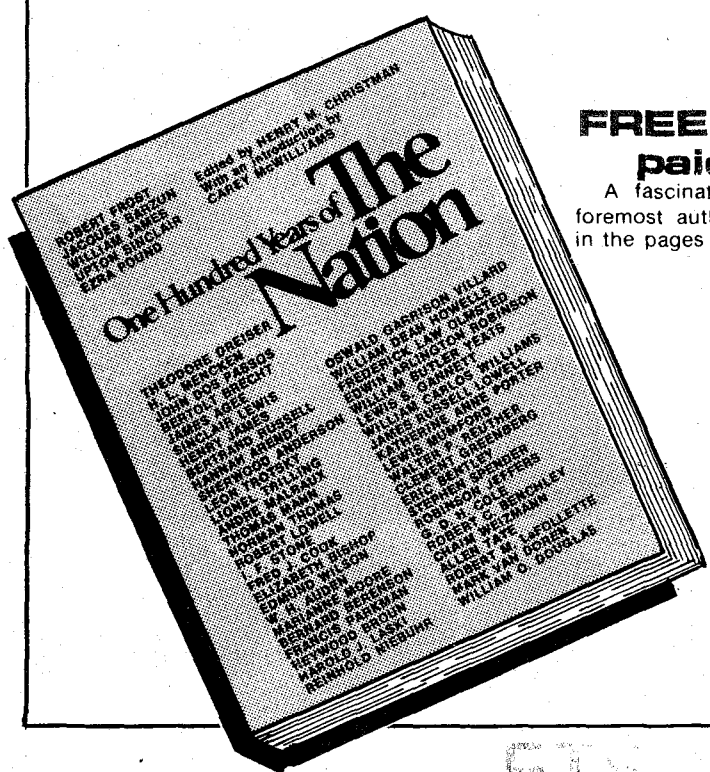

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